

# NATIONAL MUNICIPAL REVIEW

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## EDITORIAL COMMENT

Mayor "Bossy" Gillis, of Newburyport, Massachusetts, who attained national notoriety during his first term in the executive office, has been reelected for a second term by a close vote. It was Mayor Gillis who translated Jackson's famous "To the winner belong the spoils" into "The winners gets the gravy and the losers gets the dirt." His administration seems faithfully to have observed this high principle.

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Readers of the REVIEW who are cheered by occasional news of an academic person in practical politics will be interested in learning that Professor Frank G. Bates of Indiana University, well known for his writings on municipal government, has been appointed police commissioner of Bloomington, Indiana, for a four-year term beginning January 1.

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The International City Managers' Association, at its meeting in Fort Worth, elected Clifford W. Ham, manager of Pontiac, Michigan, president; Stephen B. Story, manager of Rochester, New York, first vice president; Charles H. Carran, of East Cleveland, Ohio, second vice president; and H. L. Woolhiser, of Winnetka, Illinois, third vice president. The 1930 convention will be held at San Francisco. Clarence E. Ridley continues as executive secretary of the Association.

At the meeting of the City Managers' Association at Fort Worth, Texas, Louis Brownlow, chairman of the Research Committee of the organization, announced an appropriation of \$10,000 annually for a three-year period from the Julius Rosenwald Fund of Chicago for research study and consultation service, and a gift of \$5,000 annually for a two-year period for traveling fellowships. In addition, the University of Chicago has appropriated \$27,000 for a three-year period. The research program will be carried out in coöperation with the University of Chicago.

One full-time man will be added to the staff at once to work on the development of measurement standards of efficiency under the direction of the national committee on which the National Municipal League is represented.

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Chicago Moves to Consolidate Municipal Reform  
The fiscal plight of Chicago and Cook County, related by Mr. Martin in this issue, has brought that city thousands of dollars' worth of free national advertising. But unless one accepts unqualifiedly the advertising slogan that "repetition makes reputation," he will have to admit that Chicago would have been fortunate to escape this donation. The present difficulties appear, however, to have accelerated the movement for some

unified agency to act as a clearing house or holding corporation for civic efforts. While Chicago possesses a number of organizations working in allied fields of public service, there is a feeling in some quarters that greater coördination is needed in order to present a united front against the powers which have brought reproach upon the city's fair name.

The excellent work of the Joint Commission on Real Estate Valuation, under the chairmanship of George O. Fairweather, is too well known to readers of the REVIEW to need further description here. Its accomplishments should be an inspiration to decent folk to press forward to the complete redemption of the city.

The National Municipal League has encouraged the movement for greater coördination in civic effort. During its recent convention in Chicago a meeting was held at the Union League Club which was attended by representatives of the League and the Governmental Research Association in which the experience of other cities was canvassed and the benefits of greater unification of activities working for municipal improvement pointed out.

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#### Counting P. R. Ballots

In the last election in Cincinnati approximately 145,000 ballots were cast. The count started at 8 P.M. on election night, November 5, and continued until 4 P.M., Wednesday, November 13. If the count had been conducted by expert bank clerks, working in three eight-hour shifts, the time could have been materially shortened. In Cincinnati at the last election the tellers were not experts, but were of higher calibre than at any previous time. They worked on several evenings and on Sunday.

The Cincinnati procedure provides

three distinct checks, and it would be necessary to corrupt three sets of tellers before a fraudulent tally would escape detection. Each process is itself checked by a Republican and a Democrat so that the possibility of a corrupt canvass is very remote. While this careful routine adds to the time necessary for the count, the delay in announcing the final returns is compensated for by greater popular confidence in the results.

Some have questioned the slow counting process involved in all proportional representation elections. Americans, accustomed to speed in everything, have developed a demand to know the returns before they go to bed for the night. Some are inclined to view P. R. as a freak system because of the size of the counting job. Others, assuming that the length of time consumed is due to inefficient administration, have asked why the period cannot be reduced.

Cincinnati, however, refuses to get excited over this feature of its system. Henry Bentley, chairman of the City Charter Committee, reports that the count is followed with keen interest by the people and the press and that no annoyance is felt by reason of the delay in determining the result.

Mr. Bentley has a scheme by which an unofficial count could be secured in a vote as heavy as Cincinnati's in six or eight hours. It involves a battery of punch machines and sorting machines and would be accurate except with reference to defective ballots. Of course, such ballots cannot be detected except by tellers examining each one separately, but cases in which the elimination of defective ballots would change the unofficial figures would be extremely rare. If the people demand the same quick returns as they secured under the old system, when accuracy was often sacrificed to speed, they can

secure it under Mr. Bentley's proposal. But the present practice works no injustice to anyone and there seems to be little justification for the expense and trouble of a hastier preliminary count.

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**Hopkins No Longer Manager of Cleveland** William R. Hopkins, city manager of Cleveland, was removed from office by the city council on January 13 by a vote of 14 to 11. This fulfills the prophecy of those who predicted that the recent election would spell the end of Mr. Hopkins' service as manager.

The majority of the newspapers of the country have assumed that the discharge of Mr. Hopkins marks the death knell of manager government in Cleveland. So far as we can learn there are no grounds for such a belief. On the contrary the change may open a new era in the city's administration, under an executive who more fully understands the true nature of the manager's office.

Mr. Hopkins has been an active leader in policy and politics, and the fate which has overtaken him was as certain as death and taxes. Mr. Hopkins is a man of high attainments and forceful personality, whose honest promoter's instincts led him outside the restricted field of operation and administration into the uncertain terrain of politics. He looked upon his office as that of a glorified mayor rather than as limited to the less dramatic duties of administration. He would have made a gorgeous mayor, but he could not accept the limitations of the manager's office—limitations which must be recognized and observed or else the profession of city manager cannot survive.

It is reported that State Senator D. E. Morgan will be chosen to succeed Mr. Hopkins. Mr. Morgan is a distinguished attorney of Cleveland and

a former president of the Citizens' League. He was influential in securing the new election code for Ohio which has been described as one of the most advanced steps in election administration taken by any state in recent years.

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**Civil Service in Cleveland**

Readers of the REVIEW have been aware that all has

not been well with the merit system in Cleveland. (See NATIONAL MUNICIPAL REVIEW, Vol. XVI, p. 375, and Vol. XVIII, p. 727.) Indeed, the political proclivities of the commission have been one of the most serious handicaps which manager government has had to face in that city. In 1926 the Cleveland Citizens' League made eleven specific charges of maladministration, none of which was answered by the commission. Further investigation by the League at that time was prevented by the commission's refusal to give access to its records. But popular distrust continued, and on March 18 of last year a special committee was appointed by the city council to investigate the commission. This committee named the director of the Citizens' League as its agent to make an examination, but it was not until a legal ruling had been given by the city's law department that the commission's records were opened to the League.

The special council committee reported on December 2, 1929. It endorsed the findings of the League's staff which again specifically charged that the commission had repeatedly violated the law and its own rules. The council committee gave two opportunities to the commission to answer the accusations in open hearing; but this it declined to do, and presented instead a written reply which the committee characterized as "largely a plea in confession and avoidance." The

significant charges were not met at all and the council committee was "left with only general denials." Further hearings under oath disclosed convincing evidence of widespread political activities of municipal employees contrary to the civil service law. Although conclusive testimony regarding payments of sums ranging from \$100 to \$500 to secure favorable positions on eligible lists was not developed at the hearings, the committee reported that "there have been too many such rumors in recent years to permit us to believe that there are no foundations for them."

The committee concluded that the charges were largely true and that the commission had "been sadly derelict in its duty." It therefore demanded a complete change in the personnel of the commission, with the exception of Commissioner Harry E. Davis, as well as the dismissal of the secretary and some members of the staff. But the ultimate remedy prescribed was a change in the method of appointing the commission so that the council would no longer be responsible for this duty. The committee did not state where the power of appointment should be lodged, but there is some local sentiment for conferring it upon the city manager. While this change can be effected only by charter amendment, the committee did recommend for immediate passage several ordinances to improve certain details of personnel administration.

The findings of the special committee have already had an influence. Commissioner William S. FitzGerald, whose term expired last month, was not reëlected. According to the *Plain Dealer*, FitzGerald personified the pernicious politics which have nullified the merit system in Cleveland. The secre-

tary, Ellsworth Jeffrey, has since submitted his resignation. George A. Green, director of the Citizens' Bureau (an organization dealing with the foreign born), has been appointed civil service commissioner and a complete shake-up in the staff is promised.

In our judgment, both theory and experience demand that personnel authority be responsible to the operating head of the government. Many civil service reformers, acquainted with the political practices of old-fashioned mayors, have been reluctant to make this plunge, believing that there should be some independent check upon the administration. But this attitude does not make due allowance for the changed conditions attending the introduction of the city manager idea. Surely it has been sufficiently demonstrated that city councils are temperamentally unequipped to participate in the appointment of the personnel authority, and so long as they attempt to do so the manager will be hampered by harmful political pressure. Manager Hopkins has had a convincing alibi in the civil service commission. No manager should have this alibi. Personnel administration will be no better than the manager will have it, but it may be infinitely worse if ultimate authority resides outside the manager's office.

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With this issue Rowland A. Egger, of Princeton University, takes charge of the department on Municipal Activities Abroad. Dr. W. E. Mosher, who has been in charge of the department ever since its creation, retires because of pressure of other work from many directions. We speed the parting editor with grateful appreciation for faithful service rendered.

# PULLING CHICAGO'S LOCAL GOVERNMENTS "OUT OF THE RED"

BY EDWARD M. MARTIN

*Chicago*

*Inability to meet payrolls and prospective cuts in the police, fire and health departments is directing public attention to the virtual bankruptcy of Cook County's three major governments.     ::     ::     ::*

As 1930 opened the local governments in Chicago and Cook County were confronted by a financial situation probably without parallel in the annals of American municipalities. The predicament in which the major governments found themselves is the logical culmination of many years of unsound fiscal practice. In fact, close observers predicted many months ago what is now happening and recent events have only precipitated a crisis in local affairs and brought conflicting forces to a showdown.

The immediate occasion for concern has been the difficulty of the governments in meeting their semi-monthly payrolls. Regularly recurring "crises," dramatically headlined in the daily press, have made the town conscious that all is not well in the local chancellories. The truth is that several of the local governments have practically reached the end of their financial ropes and can obtain permanent relief only by drastic changes in their methods of fiscal administration.

## THE PREDICAMENT ON JANUARY 1

Briefly stated, the situation on January 1 was something like this:

Taxes for 1928, ordinarily collectible in April, 1929, were unpaid and probably would not be collected for three to six months or longer.

The four major units of local administration—

city of Chicago, Cook County, board of education, and the Sanitary District of Chicago—have an aggregate floating debt estimated at \$270,000,000, the amount they had borrowed in anticipation of taxes not yet billed or collected.

The city corporate fund owed \$93,000,000 in anticipation of the tax levies of 1928 and 1929, probably collectible in 1930, yet out of these two collections the city will get probably not more than \$75,000,000.

The board of education owed more than \$100,000,000 in anticipation of the two levies and it will require all of the board's tax collections to retire these loans.

The corporate fund of the county owed approximately \$25,000,000 and will receive not more than \$21,000,000 from the two tax levies borrowed against.

From the standpoint of a cash basis, on which the expenditures of a year are paid from the revenues of that year, the city has gotten behind \$60,000,000, the county \$12,000,000, and the board of education between \$35,000,000 and \$40,000,000, or an aggregate amount upwards of \$107,000,000.

These and other financial data in this statement were obtained from an analysis issued by the Joint Commission on Real Estate Valuation appointed by the board of commissioners of Cook County.

The circumstance which precipitated the immediate predicament was the delay in completing the reassessment of real estate in Cook County. This reassessment must serve as the base for all taxation in the county until the

next quadrennial assessment in 1931. On account of gross inequalities, the state tax commission, through its chairman William H. Malone, declared the 1927 quadrennial invalid and ordered a complete reassessment of all real estate in the county. The state tax commission issued its original order in May, 1928, and reissued it after the general assembly had enacted enabling legislation in June of the same year. Never before had the prerogatives of the independently elected board of assessors been assailed and it was not until December, 1928, that the reassessment was initiated in earnest.

A tremendous task in itself, the appraisal was made by trained men under expert direction. It was practically completed by June, 1929. But there yet remained the task of converting the appraisal into the legal assessment. To do this required that the board of assessors first review and approve it and then that the board of review, an independently elected agency of three members, pass on the findings of the five assessors. The activities of these bodies in relation to assessments have been told in previous numbers of the REVIEW.<sup>1</sup> Sufficient to state here that after three months of deliberations commencing about October 1, the board of review has passed on six out of a grand total of 500 volumes. The extent to which the review has progressed beyond the six volumes cannot be determined from the records.

Meanwhile the reassessment remains incomplete, taxes for 1928 are uncollected, borrowing in anticipation of taxes collectible two years hence continues, interest payments on temporary borrowings pile up at the rate of \$50,000 per day, payroll crises recur, etc., etc. In short, affairs in Cook County appear to be on the verge of an impasse

which only extraordinary measures can overcome.

#### OFFICIAL OPPOSITION AGGRAVATES SITUATION

Thus while the reassessment is technically responsible for the delay in tax collections it has been greatly aggravated by the opposition, open and covert, of elected public officers to whom and to whose political sponsors and allies the assessment of property has long been a source of party patronage and personal profit. Disguised attempts have periodically been made to kick over the reassessment. But its sponsors have overcome each hurdle and have proven that it is impregnable in principle, compelling in law, and until it is completed there will be no taxes collected for local governments.

Of the more than 400 political subdivisions in Cook County dependent upon the reassessment for current financing, many or perhaps all of them have been inconvenienced, but only a comparatively small number are in serious straits. The corporate or current expense funds of the three major units thus affected—city, county, and board of education—constitute less than fifty per cent of all revenues raised in the county from general taxation. Yet the expenditures from these three funds probably command ninety per cent of the public attention and a study of these funds will give a closer insight into the situation.

The present condition of these funds is the accumulation of long-continued unsound fiscal practices. When boiled down the trouble is traceable to the absence of financial planning and lack of any rigid system of fiscal control. To give a wider margin for making appropriations, some of the units have made unduly optimistic estimates of the cash receipts from taxes. For example, the city council, against the

<sup>1</sup> NATIONAL MUNICIPAL REVIEW: September, October, November, 1928; November, 1929.

advice of the comptroller, estimated the cash receipts from the 1928 tax levy at \$44,000,000, and the receipts from the 1929 levy at \$43,000,000. The probable receipts from the two levies will be approximately \$38,500,000, and \$36,500,000, respectively. This difference of \$12,000,000 between earlier hopes and present prospects is the basis for statements about a deficit in the city corporate fund. For a number of years the board of education has estimated tax levies well in excess of the rate multiplied by the probable assessment.

Since these optimistic estimates make larger temporary borrowings possible, it is interesting to note that the present floating debt of \$270,000,000, with interest charges of \$50,000 per day, is not entirely a direct result of the reassessment. Up to 1929, in fact, the expenditures of the city, board of education, and county were from one to one and one-half years ahead of their revenues. With the present postponement of eight months in 1928 tax collections, these governments are now from two to two and one-half years ahead of their revenues. Normally these governments had a perpetual floating debt ranging from \$80,000,000 to \$150,000,000, depending on the time of year. The annual interest charge on this perpetual floating debt for a number of years has been between six and seven million dollars. If this practice is long continued, default or repudiation appears to be the inevitable result.

#### THE EFFECT OF THE REASSESSMENT

The reassessment was made according to rules laid down by the state tax commission. While the state law calls for full valuation, actual practice adopts percentage factors as the means of equalizing assessed values as between the various counties. Several studies

carried on by experts independently of one another indicated 37 per cent as the average state-wide relation of assessments to full value. This figure, in fact, was recognized in testimony in the federal court at Danville involving land valuation for taxation in Illinois. Thus on the advice of counsel, the board of assessors adopted 37 per cent as the correct equalization factor for Cook County.

The aggregate values established by the board of assessors are made on a county-wide basis and the equalization factor is applied on the same scale. This fact, together with the unexpected result of a shifting of values as between the city of Chicago and the remainder of the county, helps to explain, in part, the present stringency of the major governments. The aggregate of the reassessment for the whole county closely approximates the result of the invalidated 1927 quadrennial. What did occur, however, to the surprise of practically everyone, was a reduction of approximately \$400,000,000 in the aggregate assessment for the city of Chicago, and an increase of the aggregate for the rest of the county by practically the same amount.

Thus far practically all of the units, excepting the three mentioned, appear able to carry on under the 37 per cent factor. The revenue calculations of the city and of the board of education were upset by the actual aggregate of values resulting within the limits of Chicago. Despite the reduction in the aggregate values for Chicago, the estimated amount of cash which the city will receive from the 1928 tax levy will be approximately \$700,000 more than the cash receipts from taxes in 1928 from the levy of 1927.

#### THE CONDITION OF THE MAJOR FUNDS

The estimated total outstanding obligations of the city corporate fund

on December 31, 1929, were approximately \$92,825,000. These obligations were in the form of tax anticipation loans and unpaid bills. In addition to this amount there were unpaid judgments payable from the corporate fund estimated at more than \$5,000,000.

From present prospects it seems probable that the city will close the year 1930 with obligations of nearly \$18,000,000 in excess of probable 1931 tax collections. A large portion of the cash obtainable in 1930 will be needed to pay the obligations in excess of the 1928 and 1929 tax levies. Failure of the city to make such repayment from 1930 cash will be at the personal liability of the city comptroller and treasurer. Any plan to repay these obligations by extra-legal loans could be upset by a taxpayer's suit. Also loans from banks in excess of the actual 1931 tax collections cannot be depended upon because loans are legally payable only from the proceeds of the taxes anticipated.

In adopting the so-called city budget for 1930 the council has undoubtedly had these considerations in mind. The budget must be adopted before any further funds can be borrowed. The plan recommended by the finance committee of the council calls for appropriations of more than \$55,000,000, \$5,000,000 less than the expenditures in 1929. The comptroller recommended a \$20,000,000 reduction for 1930. In making these reductions the committee cut down the police and fire forces, pared the allotment for cleaning streets and alleys and made no provision for snow removal. It also cut into the city clerk's office and lessened the health department's field force.

The council first adopted the budget practically as recommended by the finance committee. Statements were made, however, that funds would be

found later to keep all departments intact and that the reductions called for were not immediately mandatory. But forthwith, acting undoubtedly on instructions from the comptroller, department heads cut their forces to measure. More than 1500 employees, including 473 policemen and 235 firemen, were laid off.

Matters were further complicated by Mayor Thompson vetoing these drastic reductions. This act restored the ousted employees. The mayor insisted that the council appropriate on the 1929 basis or add approximately \$5,000,000 to the recommended budget. The council, however, for the first time since Thompson took office refuses to do the mayor's bidding. Led by the finance committee, a group of aldermen controls 29 of 50 votes—enough to amend the original ordinance but not enough to override the mayor's veto.

At this writing a compromise seems probable which will keep the budget within \$400,000 of the total amount originally recommended by the finance committee and again reduce the municipal personnel.

A sidelight on the situation prevailing in city hall was given by an independent Republican member of the finance committee who said, "If the mayor was on the job he would call his cabinet together and make suggestions as to where substantial cuts could be recommended by every department head, but since he cannot or will not do this, the committee on finance will be required to make the best job of allocating the estimated income for the year of which it is capable."

#### DARK OUTLOOK FOR COUNTY

The finances of Cook County are harder hit than any other fund by reason of the delay in tax collections and also because the county is bearing the

expense of the reassessment. In addition to deferring the collection of annual tax receipts, the collection of other ordinary tax receipts (penalties from delinquent taxes and fees from collection and extension) amounting to approximately \$2,900,000 has been postponed. At the same time the direct cost of the reassessment has been approximately \$1,625,000 and the indirect cost approximately \$550,000 for interest upon temporary loans have been paid from the county corporate fund.

The county's outlook for 1930 appears dark indeed. If the 1929 rate of expenditure prevails for 1930 and the 1929 unpaid bills are paid, there will be practically no cash available after July, 1930. From indications at this writing there will be a period of four months late in 1930 when payrolls cannot be met without illegal loans from other cash on hand or loans from banks in excess of legal authority. Either method becomes increasingly risky for the county treasurer or for the lending bank. Under a new law borrowing in anticipation of taxes after January 1, 1931, cannot precede 1932 tax collections more than twelve months. Practically, under existing circumstances, this means that there will be no method of securing cash from December 1, 1930 (the start of the next fiscal year) to May 1, 1931 (when 1930 taxes are due and collectible.)

The trend of events in county affairs is indicated by the fact that unpaid bills for supplies dating back as far as December, 1928, have accumulated to the amount of more than \$6,000,000. In its budget for the current year, a cut of \$2,311,632 was made, \$1,167,632 being in salaries. Salary appropriations for the year were made on the basis of ten months' work. Also, late in December the county advertised for the sale of \$7,-

000,000 in tax anticipation warrants and failed to receive a single bid.

The board of education obtained increased tax rates for the levies of 1929 and 1930 by a special appeal to the last session of the general assembly. But it has estimated its levy for 1929 on a basis requiring a total assessed valuation of \$5,710,000,000 for the city alone, whereas the probable aggregate will be nearer \$3,800,000,000. While the board of education will obtain largely augmented revenues, its receipts will probably fall far short of revenue expectations.

#### WHAT IS THE WAY OUT?

Citizens, as well as public officers, are asking, "What is the way out of the morass?" Fortunately, there are movements on foot attempting to bring order out of chaos. The success of these efforts, however, are dependent upon several conditions and it remains to be seen whether the efforts already begun can surmount the obstacles which now beset, or will be officially placed in, its path.

Impetus to the formation of a committee of representative citizens to point the way out was given by the forces behind the Joint Commission on Real Estate Valuation. This is the group which is driving the reassessment through to successful completion, much to the dismay of some and the astonishment of others who said it could never be done. The officers of the commission are George O. Fairweather, chairman, and John O. Rees, director.

Last November the Joint Commission issued its third report "a study of the present difficulties of local governments and their causes." The report, prepared by Mr. Rees, surveyed the situation in which the major local funds found themselves at the opening of 1930 and outlined the underlying

considerations which appeared necessary to permanent financial relief. Addressed to the board of Cook County commissioners, the letter transmitting the report set forth the Commission's conclusions that "to pull the local governments out of the 'red' and to keep them out of the 'red'" requires legislation covering these four essentials:

1. A sound assessment service—involving a reorganization of the present boards of assessing and review.

2. A definite temporary borrowing power which fixes a limit for mortgaging future income.

3. A definite budget law which controls expenditure in relation to revenue.

4. A funding of existing debts which "frankly and economically faces the sad facts of present deficits, as they are, and prepares the way, not for repetition, but for orderly and controlled public finance programs."

"Any relief plan which omits any one of these items," declares the commission, "is temporizing and is quite likely not to receive public approval."

As the local governments made their appropriation plans for 1930 the need for permanent relief became more and more apparent. A meeting of representative citizens was called early in December to consider the

matter. The movement was formalized with Silas W. Strawn as chairman and an executive committee representing the city's civic, business and banking interests. The private and public affiliations of Mr. Strawn and his associates on the committee assure the movement backing from many quarters. Although the "rescue committee" or "civic saviors," as the committee is dubbed, had not announced a detailed plan of action as this was written, it is highly probable that it will take the same general course indicated by the report of the Joint Commission.

Although many public officers have importuned Governor Emmerson, both privately and publicly, to call a special session of the general assembly, he has intimated that he will issue no such call until a definite plan for permanent relief is available for consideration. No session will probably be called before the April primary. Thus while the local governments must inevitably "go to Springfield for relief," the relief will probably be forthcoming not in the form of juggled tax rates, the expedient heretofore applied, but in thoroughgoing measures of fiscal practice and control.

# NEW YORK COURT SUSTAINS THE EXECUTIVE BUDGET<sup>1</sup>

BY RINEHART J. SWENSON

*New York University*

*The controversy between Governor Roosevelt and the legislature over the executive budget has been decided, partially at least, in favor of the governor. The claim of the legislature to a share in the segregation of lump-sum appropriations has been defeated; but judicial dicta, likewise, deny this power to the governor and vest it in the department heads, thus seemingly defeating the effort to centralize responsibility in the governor.*    ::    ::    ::    ::    ::    ::    ::    ::

ON January 28, 1929, Governor Roosevelt transmitted to the New York legislature the first budget and budget bill, in accordance with Article IV-A of the state constitution. This article, familiarly known as the budget amendment, was adopted on November 8, 1927, in consequence of many years of nonpartisan agitation in favor of an executive budget. Section 2 provides that the governor

... shall submit to the legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and clearly itemized, and shall be accompanied by a bill or bills for all proposed appropriations and re-appropriations; . . .

The governor may amend or supplement the budget before final action thereon by the legislature and within thirty days of submission thereof; or, with the consent of the legislature, he may submit supplemental budget bills at any time before adjournment of the legislature. Section 3 provides:

The legislature may not alter an appropriation bill submitted by the governor except to strike

<sup>1</sup> See also R. J. Swenson, "The New York State Budget Controversy," *New York University Law Quarterly Review* (September, 1929), Vol. VI, pp. 174-181.

out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose; . . . and separate items added to the governor's bills by the legislature shall be subject to his approval as provided in section nine of article four.

## THE CONTROVERSY IN THE LEGISLATURE

The budget bill so submitted contained a number of lump-sum appropriations, not itemized, for the administrative departments, with provision for segregation or itemizing by the governor alone. The legislature passed the bill on February 27, 1929, but struck out all the lump-sum items to which the governor had attached his provision for segregation control and substituted similar items to which were attached clauses calling for joint segregation by the chairmen of the legislative finance committees and the governor, in accordance with Section 139 of the State Finance Law of 1921.<sup>2</sup> On March 13

<sup>2</sup> "Sec. 139. Segregation of Lump Sum Appropriations. When, by act of the legislature, a state department is created or reorganized, or state departments consolidated, or a board, commission, division or bureau within a department is created or reorganized, and a lump sum is appropriated for its maintenance and operation, or for

the governor vetoed these items and on March 18 he sent to the legislature, and it consented to receive, two alternative supplemental budget bills, one containing lump-sum appropriations to be segregated by the governor, the other providing for itemized appropriations. The first of these bills was not acted upon by the legislature, but the second was passed on March 28 in a modified form.<sup>1</sup> The legislature struck out a considerable number of detailed items of appropriations to the departments of law and labor and substituted lump-sum appropriations to be segregated under Section 139 of the State Finance Law;<sup>2</sup> and to the large-sum construction items, aggregating \$20,669,410, the legislature appended, as Section 11, a segregation clause similar to Section 139 of the State Finance Law.<sup>3</sup> On April 12 the governor approved the lump-sum items for the department of law and the department of labor, holding, however, that Section 139 of the State Finance Law was unconstitutional as applied to these items; he disapproved the general segregation clause, Section 11, on constitutional grounds. Other appropri-

personal service, during the first fiscal year thereafter, no moneys so appropriated shall be available for payments for personal service, except temporary service or day labor, until a schedule of positions and salaries shall have been approved by the governor, the chairman of the Finance Committee of the Senate and the chairman of the Ways and Means Committee of the Assembly, and a certificate of such approval filed with the comptroller." (*Laws of 1921*, Chap. 336; *Laws of 1927*, Chap. 364.)

<sup>1</sup> *Laws of 1929*, Chap. 593.

<sup>2</sup> *Submission of Controversy in People v. Tremaine*, Supreme Court of the State of New York, Appellate Division, Third Judicial Department (1929), Exhibit H. The Legislature struck out 133 items for the department of law, aggregating \$852,250, and 599 items for the department of labor, aggregating \$2,700,000, and substituted lump-sum items to the identical amounts.

<sup>3</sup> *Ibid.*

tion bills passed at this session of the legislature contained similar provisions and were acted on in the same manner by the governor.

#### ISSUES INVOLVED

This controversy between the governor and the legislature was submitted on an agreed statement of facts to the Appellate Division, Third Department, in an action by the attorney general in the name of the People of the State of New York to restrain the comptroller from making payments without the approval of the finance chairmen of the legislature. The Appellate Division gave judgment in favor of the plaintiff<sup>4</sup> and the case was then carried to the Court of Appeals, where the judgment of the Appellate Division was reversed.<sup>5</sup>

Several important questions of public policy and constitutional principle grew out of this controversy, most of which are germane to the main issue: namely, whether the finance chairmen of the legislature may constitutionally be given power to approve segregation of lump sums appropriated by the legislature to the administrative departments.

The governor denied the constitutional authority of the legislature to authorize its finance chairmen to participate in the segregation of lump-sum appropriations. In a public statement on April 12, 1929, he charged that "the legislature deliberately violated the spirit and letter of the constitution,"<sup>6</sup> and in his veto message of March 13, 1929, he said in part:

<sup>4</sup> *People v. Tremaine*, 235 N. Y. S. 555 (1929).

<sup>5</sup> *People v. Tremaine*, 252 N. Y. 27 (1929).

<sup>6</sup> *Brief on Behalf of Defendant, People v. Tremaine*, Supreme Court of the State of New York, Appellate Division, Third Judicial Department, p. 16. Brief by William D. Guthrie and Edward G. Griffin. (Privately printed.)

I wish here only to reiterate that the proposal of the legislature requiring the approval of two members of the legislature in addition to approval by the governor before monies previously appropriated can be expended, in accordance with schedules submitted by various department heads, is contrary to the spirit and letter of the constitution of this state.

I am forced to take such drastic action because the future of the executive budget is at stake. Either the state must carry out the principles of the executive budget, which embody fifteen years of effort to place the affairs of the state on a modern efficient business basis, or we shall drift into a hopeless situation of divided responsibility for administration of executive functions.

It is wholly contrary to the whole plan of the American form of representative constitutional government to give two-thirds of a purely executive duty to the legislative branch of the government. The executive budget was not approved by the people of this state with any such thought in mind. I will not assent to a precedent depriving the present governor or future governors of a large part of the constitutional duties which are inherent in the office of chief executive.<sup>1</sup>

#### ARGUMENTS OF BOTH SIDES

When the controversy was taken to the courts for settlement of the legal issues involved, elaborate arguments were advanced by both sides.<sup>2</sup> In support of the governor's position it was urged that Section 139 of the State Finance Law, Section 11 of

Chapter 593, Laws of 1929, and all similar segregation provisions in the appropriation acts of 1929 were either not applicable to the executive budget bills, or, if applicable, they were unconstitutional and void; that, if applicable, they were in conflict with (1) the constitutional separation of powers as defined in Article III, Section 1 and Section 7, and Article IV, Section 1,<sup>3</sup> and (2) the Reorganization Amendment of 1925<sup>4</sup> and the Budget Amendment of 1927.<sup>5</sup> A distinction was made between the power to pass a law containing itemized appropriations, and the function of itemizing lump sums contained in appropriation laws; the former is legislative, the latter is administrative—the one relates to the *making* of a law, the other to its *execution*. The legislature, *acting as a body*, may segregate any or all of its appropriations, but it may not delegate this legislative power to two of its members, the finance chairmen.<sup>6</sup>

On the other hand, the attorney general, supporting the legislative

<sup>1</sup> *Brief on Behalf of Defendant, People v. Tremaine*, p. 13. Another objection raised by Governor Roosevelt was a practical one. "I have," he said, "very definite objection to the necessity of obtaining the signatures of two gentlemen who, when the legislature is not in session, are not engaged in regular state business and are to be found, usually, in their homes often in remote localities." *Ibid.*, p. 12.

<sup>2</sup> See: *Brief on Behalf of Defendant, supra*; *Brief on Behalf of Defendant-Appellant, People v. Tremaine*, Court of Appeals, State of New York (1929), William D. Guthrie and Edward G. Griffin, counsel; *Brief for Plaintiffs, People v. Tremaine*, Supreme Court, State of New York, Appellate Division, Third Judicial Department (1929), Hamilton Ward, Attorney General.

<sup>3</sup> Article III, Section 1: "The Legislative power of this state shall be vested in the senate and assembly." Article IV, Section 1: "The Executive power shall be vested in a Governor. . . ." Article III, Section 7: "No member of the legislature shall receive any civil appointment within this state, or the Senate of the United States, from the governor, the governor and senate, or from the legislature, or from any city government, during the time for which he shall have been elected; . . ."

<sup>4</sup> Article V, as amended in 1925 and 1927, provides for the reorganization of the state administration, Section 3 of which directs the legislature to ". . . provide by law for the appropriate assignment . . . of all the civil, administrative and executive functions of the State Government, to the several departments in this article provided." (Italics are the author's.)

<sup>5</sup> Article IV-A. For the significant provisions, see the beginning of this article.

<sup>6</sup> *Brief on Behalf of Defendant-Appellant*, Points III, IV.

cause, argued that the segregation provisions objected to by the governor were not in conflict with any provision of the state constitution; that long practice established the constitutional right of members of the legislature to serve on boards and commissions and to share with the governor the responsibility of approving segregations; that the reorganization and budget amendments did not increase the powers of the governor over the state finances, but that his powers were still limited to the *initiation*, not including the *execution*, of the budget; that the segregation of lump-sum appropriations is a legislative function which the legislature might assign or delegate to two of its members as its agents; that the approval of segregations is germane to the duties of the finance chairmen under Article IV-A and is otherwise incidental to the performance of the duties of a member of the legislature; and that

. . . when acting on approvals the chairmen of the legislative committees are administrative officers, the same as the governor is when performing that duty. The legislature as a legislative body is not acting upon the approvals, nor do the chairmen represent the legislature any more than the governor represents the legislature.<sup>1</sup>

#### APPELLATE DIVISION SUSTAINS LEGISLATURE

The Appellate Division of the Supreme Court sustained the argument of the attorney-general, unable to discover in the amendments of 1925 and 1927 any intentions to change previous practice materially, or to find any constitutional objection to the exercise of administrative functions by members of the legislature. Speaking of the function of approving segregations this court said:

<sup>1</sup> *Brief for Plaintiffs, supra.*

Perhaps the duty falls within the twilight zone where the function is legislative and the act of approval is administrative; and exact classification is unnecessary. It might be designated as a deferred legislative act in aid of the performance of functions which the legislature might fully have performed originally, properly delegated to officers acting in an administrative capacity. . . . The legislation was complete, but the distribution for particular purposes was to be made by heads of departments with the approval of the governor and legislative officers, furnishing a system of check and balance. The duties of the chairmen being in furtherance of the legislative plan are not necessarily illegal because they involve administrative functions. The legislature is not acting in a body, nor are these chairmen acting as legislators in performing their duties.<sup>2</sup>

And ■

When the amendments of the constitution of 1925 and 1927 were passed by the legislature and submitted to the vote of the people, section 139 was then in force and it is not likely that any large number of persons then questioned its constitutionality or anticipated that the new constitution would by its own force affect this legislation.<sup>3</sup>

This last statement is not supported by the history of the budget amendment or by the information then in the possession of the court. If Article IV-A was not intended to alter the previous practice of budget mis-making, what was its purpose? The court neglected to throw any light on this question.

#### COURT OF APPEALS REVERSES APPELLATE DIVISIONS

Fortunately the Court of Appeals reversed the lower court. Justice Pound, speaking for the majority of this court, pointed out that while no one could question the fitness of members of the legislature to hold administrative offices *in the absence of constitutional inhibition*, such limitation existed in Article III, Section 7, adopted, in

<sup>2</sup> *People v. Tremaine*, 235 N. Y. S. 555, 564 (1929).

<sup>3</sup> *Ibid.*, p. 565.

substance, in 1821; and the designation of the finance chairmen to approve the segregation of lump-sum appropriations amounted to the making of civil appointments by the legislature within the prohibition of this article, because

The positions are created and filled by the legislature; the incumbents possess governmental powers; the powers and duties of the positions are defined by the legislature; such powers and duties are performed independently; the positions have some degree of permanency and continuity. Their power is not exhausted by a single act but is a general supervisory power over a large group of appropriations, amounting to nearly nine million dollars, to be exercised whenever the occasion arises. . . . Their appointment was on behalf of the government in a station of public trust not merely transient, occasional, or incidental.<sup>1</sup>

<sup>1</sup> *People v. Tremaine*, 252 N. Y. 27, 42 (1929). Justice Crane in a concurring opinion took exception to this point, holding that the approval of segregations was a temporary duty—the appropriations being made for only one year—that does not rise to the dignity of an office within the meaning of Article III, Section 7. *Ibid.*, p. 54.

This constitutional inhibition (Article III, Section 7) does not extend to all extra-legislative functions, according to the majority view. Members of the legislature may (1) serve on boards, commissions, or committees to investigate and report on matters in aid of legislation; (2) be assigned duties of a private nature, as when they are named as ex officio trustees of private educational establishments; (3) be given duties that are merely transitory or occasional and of minor importance, not rising to the dignity of a civil appointment; and (4) be assigned to administrative duties *by the constitution*.

Justice Crane's exception to point (2) above is rather well taken. He said: "How is this a private trust? When a member of the board is thus designated by law, it is a public trust, or else the legislature has no power to deal with it. It is a private trust for those not sitting by designation under some specific law. The legislature cannot give away public moneys. . . . The legislators sit on these boards spending the public moneys because the duties are incidental to the appropriations and the duties of the legislature." *Ibid.*, p. 56.

This, said the court, is a clear and conspicuous instance of an attempt by the legislature to confer administrative powers upon two of its members. The legislature not only made a law, that is, made an appropriation, but it made two of its members ex officio its executive agents to carry out the law, that is, to act on the segregation of the appropriation. In this connection the court added:

Should the question arise whether the appointments under consideration are legislative or administrative, a dilemma presents itself, either side of which is fatal to the contention of the respondent. If they are legislative in character the appointment amounts to a delegation of the legislative power over appropriations. The legislature cannot secure relief from its duties or responsibilities by a general delegation of legislative power to some one else. . . . If, on the other hand, the power is administrative, it has no real relation to legislative power. The head of the department does not legislate when he segregates a lump-sum appropriation. The legislation is complete when the appropriation is made. The legislature might make the segregation itself but it may not confer administrative powers upon its members without giving them, unconstitutionally, civil appointments to administrative offices. . . .

The State Finance Law, section 139, and the vetoed section 11 of chapter 593 of the Laws of 1929 and all similar segregation provisions in the appropriation bills of 1929 are, therefore, unconstitutional and void. . . .<sup>2</sup>

The court then proceeded to declare the state office site and building commission, created in 1926, "eviscerated and invalidated, at least so far as its money-spending functions are concerned." Chapter 93 of the Laws of 1929 had appropriated \$3,800,000 to be expended by and under the direction of this commission. The commission consisted of the following members: the governor as chairman, the temporary president of the senate, the speaker of the assembly, the chairmen of the legislative finance committees, the

<sup>2</sup> *Ibid.*, pp. 44, 45. (Italics are the author's.)

superintendent of public works, and the state architect. A majority of these were legislative officers acting *ex officio* and were "thus holding invalid civil appointments of an administrative character from the legislature."

This is as far as it was necessary for the court to go, having disposed of the matters properly before it by holding that members of the legislature may not participate, *because of Article III, Section 7*, as individuals or as members of boards or commissions, in the segregation or spending of appropriations. Since the disputed provisions of the budget bill were held violate of *one* section of the constitution it was not necessary to declare them in conflict with any other provision, or to express an opinion upon any other point raised by counsel. It is not clear from the opinion, therefore, whether Justice Pound intends his discussion of the separation of governmental powers (apart from Article III, Section 7) and of Article IV-A and Article V to be regarded as *additional* grounds for, and thus a part of, the decision, or if it is to be taken as *obiter dicta*. Whether or not a part of the doctrine of the case, the discussion is most persuasive.

Taking up the argument of respondent's counsel (which was approved by the Appellate Division) that past legislative practice established a presumption in favor of its constitutional validity, Justice Pound said:

Since 1921 a department of the state government, practically permanent in its functions, has been created by the legislature by conferring on its two chairmen functions of segregation and approval. Liberal appropriations are made for the expenses necessary in this connection. Other designations of members *ex officio* to act on boards and commissions have gone unchallenged. Good reasons suggest themselves for such inaction. Many such designations were free from criticism for the reasons hereinbefore stated, as being either private or truly special and temporary in character . . . or in part

*quasi-legislative*. In others, the speaker of the assembly, or some other legislative officer, has been named *ex officio* as a minority member of a board composed largely of administrative officers, as was the case of the old board of trustees of public buildings. All questions of legislative eligibility in such instances have become stale with the lapse of time. *The custom does not amount to a concession of power to the legislature to control the expenditure of appropriations once and finally made, or to a practical construction of the constitution in favor of the legislation here questioned.*<sup>1</sup>

Referring to appellant's contention that the legislature disregarded Section 3 of Article IV-A when it inserted Section 11 in the governor's supplemental budget bill, the opinion continues:

As we have already held that section 11 and similar provisions are void for unconstitutionality, the specific question is at present largely academic. If it were necessarily before us, an additional reason would appear for reversing the judgment below so far as it is affected by such provisions.<sup>2</sup>

But Section 11 is then held to be an alteration of the bill other than by striking out or reducing items therein, and therefore in conflict with Section 3 of the budget amendment. As to the governor's power to veto this item, if it had been properly in the budget, the learned judge said that: ". . . much force attaches to the contention that such a direction is one which the governor might veto."<sup>3</sup>

#### LUMP-SUM APPROPRIATION UNDER CONTROL OF DEPARTMENT HEADS

Having declared the segregation provisions attached to the budget bill by

<sup>1</sup> *People v. Tremaine*, pp. 46-47. The total appropriations requiring segregation or approval by members of the legislature from 1921 to 1929 (both dates inclusive) is \$466,122,677.22. *Brief in Behalf of Defendant-Appellant*, Appendix. (Italics are the author's.)

<sup>2</sup> *Ibid.*, p. 48.

<sup>3</sup> *Ibid.*, pp. 49-50.

the legislature unconstitutional, the court apparently held, although again not necessary to the decision, that the governor may not attach to his budget bills clauses providing for segregation by himself alone, but that segregation of lump-sum appropriations must be left to the heads of the administrative departments concerned. Said the court:

A fundamental question presents itself in this connection. If the legislature may not add segregation provisions to a budget bill proposed by the governor without altering the appropriation bill, contrary to the provisions of article IV-A, section 3, it would necessarily follow that the governor ought not to insert such provisions in his bill. He may not insist that the legislature accept his propositions in regard to segregations without amendment, while denying to it the power to alter them. The alternative would be the striking out of the items of appropriation thus qualified *in toto* and a possible deadlock over details on a political question outside the field of judicial review. The whole business of segregation seems to be a matter foreign to the budget appropriation bills, tending to prevent necessary appropriations for the support of government whenever the governor and the legislature are not in accord as to the manner in which lump-sum appropriations should be segregated.

The result of our decision is that it devolves upon the heads of the departments to which the lump-sum appropriations of 1929 drawn in question in this action were made, excepting the appropriations for the state office site and building commission, to apportion and allot the funds under such appropriations in accordance with law, without the approval of the governor or the legislative chairmen.<sup>1</sup>

If this *gratis dictum* prevails, the attempt to centralize in the governor responsibility for the segregation of appropriations will have been defeated, and the budget amendment will be devitalized.

#### JUSTICE CRANE'S OPINIONS

Justice Crane concurred in the decision of the majority but for different reasons. Said he:

<sup>1</sup> *People v. Tremaine*, pp. 50, 52.

The duty of the approval to segregation of the various sums appropriated required by the legislature is not the appointment to an office within section 7 of Article III of the constitution. It is, however, equally illegal by attempting to clothe members of the legislature with administrative functions after an appropriation has been made.<sup>2</sup>

That is,

... when a member of the legislature is clothed with the duty of segregating lump-sum appropriations he ceases to act as a legislator and is performing executive duties, administrative functions which under our form of government is illegal.<sup>3</sup>

The most significant part of this concurring opinion, however, relates to the budget amendment, and furnishes, in the opinion of the writer, the most important ground for reversal.

There are also other reasons for reversing the judgment below in its principal features. In adopting the amendment to the constitution now known as the executive budget, it appears to me that there was an attempt made in article IV-A of the state constitution to provide a new method, given in much detail, for the making of appropriations for the various departments of government. Whatever may have been done before, new methods were to be pursued upon the adoption of this amendment; laws in force at the time fell by the way—the constitution was to override all of the laws and start with a clean sheet.<sup>4</sup>

Therefore, Section 139 of the State Finance Law had no further application to the budget, and the lump-sum appropriations made by the budget bill were to be segregated by the heads of the departments concerned. Section 11 had no force or effect whatever, as it was not an item of appropriation within Article IV-A; if anything, it was an attempted alteration forbidden by this article.

It is to be regretted that the decision

<sup>2</sup> *Ibid.*, pp. 59-60.

<sup>3</sup> *Ibid.*, p. 56.

<sup>4</sup> *Ibid.*, pp. 60, 61-62.

was not made to rest squarely upon the budget amendment—that the views of Justice Crane did not prevail. The people of the state are more interested in the meaning and effect of the amendments of 1925 and 1927 than in a constitutional section adopted in 1821 which, it appears, has been pretty generally disregarded. The position of the legislature in this controversy has been wholly untenable, and its unpromising partisanship has been an object lesson in party government. For many years New York has had a Democratic governor and a Republican legislature elected by a Republican electorate that has supported the governor consistently on matters referred

to it as a result of partisan deadlocks in Albany. Support of the principle of an executive budget has been nonpartisan outside of the legislature, but an ill-advised majority of that body has fought stubbornly to nullify the budget amendment of 1927; and when the Appellate Division of the Third Department joined the nullifiers, the friends of common-sense budgeting became apprehensive lest another amendment should become necessary in order to give effect to what had seemed to be a clearly expressed public will. That apprehension has not been fully allayed by the recent decision—that decision left too many important questions in doubt.

## CLEVELAND WOMEN IN GOVERNMENT AND ALLIED FIELDS

BY RANDOLPH O. HUUS

*Western Reserve University*

*Public service offers an expanding field for women, justifying college specialization in social science courses.* :: :: :: :: ::

It has been customary for college women after graduation either to marry or to teach. A few bold spirits invade the professions and more enter the business world. The rapidly increasing number of college courses bearing on business and professional careers makes it easy for the woman undergraduate to secure a valuable background. After graduation she knows that opportunities exist in these fields. But what about the young woman who takes a liking to politics and government as professions? Let us assume that the institution she attends offers satisfactory preliminary training in the theory and practice of

governmental work. She specializes in government courses, not neglecting economics and sociology. After graduation what can she do? With this problem in mind a recent survey<sup>1</sup> was made of positions women are holding in Cleveland that were concerned, directly or indirectly, with the work of government.

### WHAT THE SURVEY INCLUDED

The investigation was limited to positions now occupied by women within the confines of Cleveland.

<sup>1</sup> Survey made by Miss Lucille Elliott under direction of writer for the Department of Political Science, Western Reserve University.

Four major groupings of these positions were made: (1) those of a strictly governmental nature under the national, state, county and city units; (2) the teaching positions in the public schools including courses in civics, economics, sociology, history, and the more elementary subject called social studies; (3) positions with agencies supported by the Community Fund and, finally; (4) those with private civic organizations. The information sought concerning each individual position covered the title, term, method of selection, qualifications (legal or actual), and the major duties. With a very few exceptions no positions were considered with incomes less than \$1,800 annually.

It was found that in Cleveland women were holding 296 positions in which a background in the social sciences and especially in government was important. About 55 per cent (162) of these positions were with the public school system and the remaining 45 per cent (148) with governmental units or with social or private agencies. Of these 148 jobs, eighty were strictly governmental jobs. Classifying these jobs we find that two are with the national government, twenty-four with the state, nineteen with the county, and thirty-five with the city. Positions with the county and city government account for two-thirds of the total number.

#### DISTRIBUTION AND TYPES OF GOVERNMENTAL JOBS

The distribution of these eighty positions among the legislative, executive and judicial branches of our government was as follows: administrative, forty-seven; judicial, twenty-eight; legislative, five. The considerable number of positions of a technical and clerical nature in the court system is worth noting. These classifications

are analyzed below in some detail to indicate the distribution among the various units of government and also something of the nature of the work.

*With the Executive Department.*—Of the forty-seven administrative positions one was with the national government, twenty-one were with the state, six with the county, and nineteen with the city. This makes the state the largest employer of women for administrative work, with the city a close second. The single position with the national government was a rather important one—manager of the Cleveland office of the department of commerce. In a coöperative capacity the incumbent was also secretary of the foreign trade department of the local chamber of commerce. About half of the state jobs were related to such activities as factory and building inspection, workmen's compensation and employment—for the most part inspectional and clerical in nature. Almost an equal number of women were employed as examiners with the bureau of inspection and supervision of public offices. They investigate the accounts of local boards of education. While their duties are often of a rather mechanical nature the opportunity exists for doing some genuine research work.

The nature of the six positions with the county varies greatly, including elections, taxation, health, and pensions. Of especial interest is the fact that a woman is the director of the delinquent tax office.

There is much less variety in the positions with the city government. Of the nineteen administrative positions, seventeen are with the police-women's bureau. One of the remaining two is a junior clerk with the civil service commission and the other is commissioner of cemeteries. As far as variety of work is concerned the state

and the county seem to offer more opportunity than the city government. All were appointive positions.

*With the Courts.*<sup>1</sup>—Of the twenty-eight positions connected with the courts, fourteen were with the court of common pleas and the probate court; thirteen with the municipal court and one with the federal district court. We find only one judge (municipal court) but four assistant prosecuting attorneys, one with the federal district court, one with the court of common pleas, and two with the municipal court. There are nine offices that would seem to demand of the incumbents a satisfactory background in the social sciences, especially sociology and social work. Seven of these are probation officers, the other two being a referee for the juvenile court and a psychologist, respectively. Most of the women of this group, however, are clerks, stenographers and bailiffs—fourteen of the twenty-eight. The positions are all appointive except the municipal judge, who is popularly elected.

*With Legislative Bodies.*—There are five women within the Cleveland metropolitan district who hold legislative positions. Of the five senators allotted to Cuyahoga County one is a woman; of sixteen representatives three, and of twenty-five members of the Cleveland city council, one—the ratios being 20, 19 and 4 per cent, respectively, with the poorest showing in the city council. Prior to the councilmanic election of November, 1927, there were three women in the council, but two of these, both independently inclined, were defeated for reelection.

<sup>1</sup> One of the judges of Ohio's Supreme Court at Columbus is a Cleveland woman not included in above survey because the position is a permanent one outside of city surveyed. This is probably the outstanding office in the state held by a woman.

#### TEACHING AND LIBRARY WORK

Now we come to the school and library jobs. What opportunity exists in the Cleveland public schools for the teaching of government and the allied social sciences? Of one hundred and twenty-six women in the junior high schools, one hundred and fifteen are teaching social studies, two combine this course with English, seven teach history, while two others teach history with English or civics. This course in social studies is a composite one covering special assignments in history, geography, economics, sociology, and government, with some emphasis on local problems. Considering the emphasis given this course and the number of teachers employed, there would seem to be definite opportunities here for women properly grounded in the social sciences. In the senior high school there are thirty-six women teaching the social sciences. Of these, twenty-two teach only history while seven combine history with some unrelated subject. In three other cases history is combined with economics and in two cases with civics. Finally, there is one woman teaching economics and sociology. The large majority of these women teach history—the showing for government, economics, and sociology being quite unimpressive.

There are five major positions in the Cleveland Public Library that are of some interest. The chief librarian and the head of the main library are both women. In such positions, technical training, executive ability, and experience are essentials. However, considering the public nature of such offices, a preliminary college background in the social sciences, including history, should provide an excellent basis for such positions. More directly in the field of this survey are the three library division heads embracing his-

tory, sociology, and municipal reference respectively. Surely, all other things being equal, the college graduate specially trained in the social sciences and history should have the advantage in these fields over persons having only the requisite technical training and experience.

#### WELFARE FEDERATION POSITIONS

The Welfare Federation embraces one hundred and ten agencies partially supported by the Community Fund's annual budget of over \$4,000,000. In these activities women come into their own. Thirty-three positions were selected for analysis in which training in sociology and social work was essential and a background in the allied fields of psychology, government and economics valuable. The data gathered concerning these jobs indicated that the following types of academic and technical training were required in one or more cases: graduate diploma in social work, college major in sociology, special courses in public health, public health nursing degrees, and a knowledge of business methods and office routine. Most of these agencies were concerned with some aspect of public health; aside from this, specific agencies were concerned with problems of poverty, social maladjustment, recreation, and crime. Classifying these thirty-three positions by title we find seventeen secretaries, six head workers of social settlements, five directors, three psychiatric social workers and two supervisors. Actually thirty of the positions were largely executive or administrative in nature. They involved directing staff workers, taking charge of committees, meeting and coöperating with other groups and managing the office. Most of the executive work was of a rather varied nature but in a few instances, such as case-work supervision, it was quite specialized.

Many of the women did considerable work of an educational nature; it was necessary for them to know how to talk and write effectively. Some made investigations and prepared research reports on special assignments. The most common requirement was some degree of theoretical and technical preparation in the various aspects of sociology. The undergraduate preparing for work along this line might also with benefit take such courses in economics as labor problems and public finance, and such courses in political science as state and municipal government. The one agency in this group not concerned with the usual social-service activities is the Association for the Reform of Criminal Justice, whose director is actively interested in the improvement of local criminal-court and police methods.

#### PRIVATE CIVIC GROUPS

There are five women in Cleveland holding important positions with private civic groups. These women are professional secretaries and the work is largely executive in nature. The groups include the committee on city plan of the Chamber of Commerce, the Women's City Club, the local League of Women Voters, the Women's Council for the Promotion of Peace, and the Consumers' League of Ohio. What better background is there as a preparation for the first three positions than specialization in the field of local government—state, county and municipal, with allied courses in economics and sociology? Knowledge of international law and politics should obviously be required for the fourth position. Again in the position in the Consumers' League, a background in each of the divisions of the social sciences seems essential. While there are not many openings with civic groups of this type the positions are

interesting, important, and fairly well paid, and colleges could provide the needed theoretical and technical training. Here, too, some knowledge of modern business methods would be worth acquiring.

#### QUALIFICATIONS

The data relative to the qualifications were secured for the most part from the present occupants of these positions, the remainder coming from laws, ordinances, and reports. Of the entire two hundred and ninety-six positions, only eighty-four definitely required a college education, about 28 per cent of the jobs. It would seem that all of the positions were such as to make an elementary background in the social sciences essential, yet the information secured indicated, on the whole, scant appreciation of this fact. These jobs seem as desirable and as well paid as the usual run of teaching or business positions that women college graduates accept, and some of them should be more interesting. In seventeen instances a business-college education was a requisite—in a great number of cases it was evident that of two equally prepared applicants the one with additional business training or experience would get the job. In sixty-three cases practical experience was stressed, possibly reflecting the

attitude of the present incumbents. Civil service tests were given for fifty-four positions, or 41 per cent of the total (teaching positions excluded). All of the other positions were filled by appointment, except six that were elective.

#### SALARIES

Teachers in the junior high schools have a salary range of \$1,350 to \$3,300 per year, and in the senior high school from \$1,500 to \$3,600 annually. In the non-teaching jobs salary data was secured in eighty-two cases. The lowest salary was \$1,000 annually and the highest \$8,500. Between \$1,000 and \$1,500 there were two positions; between \$1,800 and \$2,100, twenty-seven; between \$2,100 and \$3,000, forty-five; between \$3,200 and \$4,000, four; and above \$4,000, two. There are several other positions with salaries above \$4,000, but it was not possible to get the exact figures. Most of these salaries (88 per cent) range between \$1,800 and \$3,000, while 55 per cent are between \$2,100 and \$3,000. Women have invaded the field of governmental, social and civic work as well as the old standby, teaching. Some of these positions merit the attention of women undergraduates who have no great hankering for teaching or business, but need or prefer to earn a living.

# MANAGER CITIES IN ACTION

## I. TWO WISCONSIN CITIES

BY ERNEST S. BRADFORD

*New Rochelle, New York*

*In April, 1929, the charter commission of New Rochelle, New York, reported a city manager charter which was accepted by the voters in November. This charter was the result of more than a year's study of the workings of the plan in both large and small cities throughout the United States. During the drafting of the charter Dr. Bradford, who will be remembered as the author of "Commission Government in American Cities," visited thirty cities and observed their managers and councils in action. At our request he is preparing a series of articles, of which this is the first, giving the results of his survey. The material collected last year is being supplemented by current information in order that his findings may be up to the minute in every respect. The subject of next month's installment of this continued story of civic progress will be "Two New York Cities." :: :: :: :: :: ::*

### JANESVILLE, WISCONSIN

JANESVILLE is a prosperous manufacturing city of some 20,000 population located about ninety miles from Chicago on the banks of the Rock River. It serves as the distributing center for a rich farming area of southern Wisconsin and is at the same time the home of the Parker fountain pen manufacturing plant, one of the Chevrolet automobile factories, and a string of minor industries.

Janesville in 1912 gave up mayor-council government in favor of the commission form, and for the following six years operated under a commission whose motto was, "Keep taxes low." Dissatisfied with its lack of business growth under this policy, the city returned to the mayor-council form in 1918; but once more disappointed with the inefficient government which resulted, it turned to the council-manager form, which it adopted in April,

1922, by a vote of 3,098 for to 2,387 against.

The new plan went into operation in 1923. Seven councilmen elected at large replaced fourteen ward aldermen, two from each of seven wards. The number seems to have been a compromise, designed to please those who had still in mind the old ward lines.

The choice of the first council for manager was Mr. Henry Traxler, an engineer, who had previously been city manager of Clarinda, Iowa; he took office in September, 1923. He made few sweeping changes among city officials and employees, retaining most of those who were in the city service, on the understanding that they should remain as long as they were loyal and efficient public servants.

When the opposition, two years later, elected three members of the council, it was feared that there would be a change in the manager, but he

appears to have held the confidence of both groups and has remained.

His recommendations are given much weight by the busy councilmen. According to well-informed persons whom I interviewed, the city has made exceptional progress in the past five years.

The most important results secured under the manager have been:

(a) Reorganization of the city departments, consolidating under one head offices formerly separately organized and operated, such as the assessor's office, the city treasurer, city clerk's office, and the water department, which were all grouped together under the department of finance.

(b) A more sensible and comprehensive planning of street construction and other engineering work, looking ahead to the future needs of the entire city.

(c) Careful attention to the city's interest in keeping down the cost of supplies and the charges for service. Shortly before the old contract with the lighting company was to expire, the city manager secured an estimate of what it would cost if the city produced its own light, and when the lighting company at the expiration of the period stated that it would have to raise the rates for street lamps the city manager told them that he could produce the current at a figure as low as the existing rate or lower, whereupon the company renewed the contract at the old rates.

"The fact that all of the councilmen are elected by the entire body of voters and not by wards has given us higher-grade men than formerly," said a lawyer who has lived in the city for more than twenty years; "one of the most marked features of their work has been their intelligent planning, with the coöperation of the manager, for the future needs of the city. There is not much difference in the degree of state

or national partisanship seen in local elections, for there has never been much of this in this city. Financial management has been better and the tax rate has been reduced steadily since 1923. No one thinks of going back to the old, inefficient mayor-council government."<sup>1</sup>

#### RHINELANDER

The city of Rhineland, Wisconsin, a northern manufacturing city of 6,654 people, according to the census of 1920, has had a city manager since 1926, when the new form first went into effect. Rhineland has three sawmills and veneer-making plants, and a large paper mill, and is the center of a considerable trading area. Its streets are well kept and its residential area is attractive.

The city manager plan was adopted in an effort to get away from the unsatisfactory financial conditions which previously existed. When the new council of five, elected at large, replaced the old ward council of twelve, it employed George Garrett, a western engineer, as the first manager.

Before Garrett was well started, friction developed between council and manager, and he resigned after four months to become manager of a city in Oregon. He was succeeded by Charles Grau, an engineer whom Garrett had

<sup>1</sup> The tax rates for the years 1921 to 1928 have been as follows:

1921.....	25.89
1922.....	21.97
1923.....	26.76
1924.....	26.62
1925.....	24.88
1926.....	22.20
1927.....	22.00
1928.....	22.00

The author has not yet had opportunity to analyze these figures in order to determine how much more the city has secured for its tax dollar than formerly, which is so frequently the case under efficient managers.

brought in to help him. Grau handled the reins very satisfactorily until the spring of 1929, when he resigned to accept a better position with the local gas company. Theodore M. Wardwell took his place and is the present manager.

Under the managers, city affairs are reported to have been handled much better than under the old form. "The city was in a bad way financially," said the president of a local bank, "bonded to the limit, and behind in meeting current expenses, which it tried to do by collecting taxes in advance. This being insufficient, the city issued short-term obligations, of which it had \$200,000 outstanding at the time the manager plan went into effect. The effect of the new administration was to centralize purchasing under a single head, with the result that there has been a marked financial saving. The short-term indebtedness has been cut in three years from \$200,000 to \$70,000 and will be further reduced during the present year.

"The budget means something now as a limit of expenditures; formerly, it was only a scrap of paper; the council used to appropriate additional amounts, after the original budget had been passed, without much thought as to the funds available to meet the proposed outlays."

The streets are said to be in about the same condition as they were, most of the paving having been done prior to the coming of the manager. There has been little need for new paving since and little has been done.

Snow removal is better than formerly, an important matter in a northern city with frequent heavy snowfalls.

The police and fire departments are about as before.

Larger water mains have been laid within the past two years to serve the

industrial plants; insufficiency of water supply was responsible for the loss by fire previously of one of the large manufacturing establishments in Rhinelander.

When the manager plan was first inaugurated an entirely new council was elected and most of its members have since been reelected. The president of the council is now serving his fourth year; there is no member of the present council who has not been reelected one or more times. The term of councilmen, one year, is regarded by many as too short, and the fact that all of the terms expire at one time is held to be open to the objection that a political upheaval might at some time replace the entire council with men unfamiliar with city affairs. This is less likely to happen than formerly, since public confidence in the council has increased to a point where the voters sometimes reelect the entire group of councilmen, as they did in 1929.

The managers have not changed greatly the personnel of department heads and city employees. The same police chief is in charge as was here before the change; the present fire chief is the former assistant chief, who became head when the old chief retired. There is a new city clerk who replaced the old one when a better job was offered the latter. There is a new city treasurer. The man in charge of water works is the same as before. The improvements under the managers have been secured largely by adopting better methods rather than by changing the administrative personnel. "There was not a single city employee discharged," said the editor of the *Rhineland News*, "when the new manager came in."

There has proved to be no basis for the fear that all the council would come from one district or ward, and so

fail to look after the interests of the other sections. "Two of the council are from the south section of the city, three from the central-eastern section. There is no one of the council at present who lives on the west side," said the same editor, "but the council has given that section improvements which they never could have got under the mayor-council form—street lights, sewers and water mains."

The cashier of a large bank also cited the reduction of the city's floating debt as an indication of improved financial management under the managers; he was emphatic in favoring the new form. A lawyer who was disposed to be critical of the existing council as having pro-

vided no proper water-filtration system, which he said is greatly needed, believes that the manager idea is sound, but that the administration is not as efficiently handled as it might be. He spoke of the council, however, as consisting of more competent men than formerly. A former mayor did not believe that the city is doing better under the managers; a hardware merchant criticized the police for not catching robbers who had broken into his store twice, recently. The opinion of the majority of those interviewed was that conditions are much better than formerly and that public sentiment is strongly favorable to the council-manager government.

## MUNICIPAL GOVERNMENT IN SOVIET RUSSIA

### III. MUNICIPAL FINANCE

BY BERTRAM W. MAXWELL

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*This is the third and last of a series of articles on the government of Russian cities, the previous articles having appeared in the December and January issues of the REVIEW.*    ::    ::    ::    ::    ::

THE present municipal financial system of Soviet Russia dates back to 1925. Previous to that time the financial affairs of the city soviets were entirely merged with those of the higher soviets. In 1923, however, a Financial Decree was promulgated which extended to municipal organs the right to coöperate in the preparation of the budget, but since the cities had no administrative machinery of their own,<sup>1</sup>

this grant of authority had but slight practical significance.

#### THE FINANCIAL DECREE OF 1925

Early in 1925 the Union Central Executive Committee issued a Financial Decree which laid down general principles governing the field of local finance and taxation, leaving, however, the working out of the details to the constituent republics. Soon after, the Central Executive Committee of R. S. F. S. R. issued a Financial Decree based on the Federal Enabling Act, which

<sup>1</sup> See writer's article on *Municipal Government in Soviet Russia*, in NATIONAL MUNICIPAL REVIEW for January, 1930.

regulated in detail the entire matter of municipal finance. But these provisions were such as to reduce considerably the scope of municipal administration of finances defined by the Municipal Act of 1925, which authorized the city soviets to frame and confirm their budgets.<sup>1</sup>

In contrast to the latter provision, the Financial Decree makes it mandatory upon the city soviets to present their budgets to the executive committees of the higher soviets (county or provincial, as the case may be) for examination, review, audit, and final decision. Indeed, the higher soviets are given a wide range of authority, so that the examination of municipal budgets is by no means a mere formal compliance with the law, for the higher soviets may rigidly curtail the income of municipalities by denying them the right to certain taxes, surtaxes, and other sources of revenue. Furthermore, the law authorizes the executive committees to use their own discretion in making or recommending changes in city estimates, especially if those changes are deemed necessary for the purpose of equalizing of income and expenditures.<sup>2</sup>

The authority of the higher soviets over city soviets is further augmented by the provision of the law giving the right to decide whether certain properties are to be assessed for city or county taxation, and coupled with this right is the delegation to the higher soviets of a general supervisory authority in the matter of tax collection.<sup>3</sup>

<sup>1</sup> See writer's article on *Municipal Government in Soviet Russia*, in *NATIONAL MUNICIPAL REVIEW* for January, 1930.

<sup>2</sup> From the above statement, it may be deduced that the city soviets have only nominal authority in budget making, the real power being lodged with central authorities.

<sup>3</sup> City soviets may, however, appeal rulings of higher soviets to central authorities, but while action is pending, appealed decisions are not suspended. The Financial Decree designates in

#### SOURCES OF REVENUE

Within these limitations cities are assigned the following sources of revenue:

- I. Taxes, subdivided as follows:
  1. Tax on business buildings.
  2. Tax on dwelling places.
  3. Tax on transportation.
  4. Tax on amusements.
  5. Tax on live stock and raw animal products.
- II. Surtaxes:
  1. On state business and trade taxes.
  2. On state income tax.
  3. On state tax levied on agricultural lands within city jurisdiction to an extent of not less than 40 per cent.
- III. Surcharges:
  1. Surcharges on fees paid to the state for licenses to sell alcoholic beverages and tobacco within city limits.
  2. Surcharges on state notarial fees.
  3. Surcharges on municipal court fees.
- IV. Other sources of revenue:
  1. Rents from dwelling places, business buildings, market places, and other establishments.
  2. Earnings from city lands, parks, and other similar property.
  3. Rents received for trading space on public squares, markets, streets, promenades, beaches, etc.
  4. Earnings from municipalized economic-commercial enterprises.
  5. Rents from municipal real estate.
  6. Revenue from enterprises and undertakings especially assigned to municipalities for that purpose.
  7. Parts of profits from state insurance, especially designated by law.
  8. Interest on municipal funds.
  9. Sale of superfluous city property.
  10. Surpluses remaining from the previous year.
  11. Back taxes.
  12. Profits from stocks in banking institutions and other corporations.

detail the classes of taxpayers and those exempted or granted reduction of taxes.

13. Regular and special grants and aids from state funds.
14. Income from special funds and endowments, and stated contributions from institutions and organizations.
15. Loans.<sup>1</sup>

#### SUBSIDIES

Subsidies and aids are generally granted by the state for the support of educational, medical, and agricultural personnel in schools, hospitals, etc. The subsidies are increased or decreased in accordance with the financial condition of a given municipality. The ultimate decision as to the grant and the amount of the subsidies lies with the executive committees of the province and county in which the cities are located. In exceptional cases municipalities may receive donations from the state to balance their budgets, provided they are entirely unable to raise funds themselves. Municipalities also have access to special funds and endowments of coöperative building associations and the fund in the name of V. I. Lenin, which is especially designated for the care of homeless children. Finally, there are two types of emergency funds, viz., federal and local. The federal emergency fund is made of surtaxes to federal taxes and of stated sums subtracted from provincial, county, and municipal income and are under the jurisdiction of the executive committees. Both emergency funds are to be used only in cases where municipalities have given absolute proof of being unable to balance their budgets. This aid, however, is very seldom granted, and the municipalities applying for it are subject to a most rigid inspection.<sup>2</sup>

<sup>1</sup> City soviets may negotiate with state coöperative institutions, and private persons in the Soviet Union and abroad; the latter, however, is out of the question at present. They may also issue bonds and certificates of indebtedness.

<sup>2</sup> Some Bolshevik municipal authorities suggest

#### EXPENDITURES OF CITIES

Expenditures of cities may be subdivided into the following general items:

1. The support of city soviets, their presidia, and subdivisions of departments of the higher soviets designated for municipal work, municipal courts, prosecutors, and juries.

2. Payment of salaries of city militia (police). Expenses in connection with criminal investigation, the upkeep of city jails, detention homes, communal buildings, properties, undertakings, welfare agencies, and fire departments.

3. Organization, equipment, and upkeep of lower professional technical schools for the city population; short technical courses for adults, elementary schools, children's homes; kindergartens, schools for adolescents, and institutions for civic training, libraries, clubs, schools for adolescent and adult illiterates, and persons who are about to be called for military service, schools of political grammar,<sup>3</sup> city hospitals, clinics, first-aid centers, etc.

4. Expenses in connection with museums, art galleries, theatres, expositions, archives, and the organization of excursions for cultural educational purposes.

5. Support of various municipal sanitary organizations and undertakings, prophylactic measures against social and contagious diseases, and activities for the suppression of prostitution and pauperism.

6. Expenses in connection with measures to safeguard motherhood, infancy, and children's health in cities.

7. Support of homes for the disabled, and their training.

8. Grants and subsidies to various local organizations for mutual help and expenses in connection with

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that the following sources of revenue should be transferred to cities:

Profits from mineral resources within the jurisdiction of the cities.

Parts of profits from state enterprises which have been delegated to city management.

Taxes on incoming and outgoing freight, transported by rail or water.

Fees paid on business transactions on various exchanges located in city territory. See Chugunov, *Gorodskiy Sovet*, pp. 145-147.

<sup>3</sup> Special schools for the study of history, civics, and social ethics from a Marxian standpoint.

tion with payment of pensions to war veterans, their families, and the dependents of those killed in battle.<sup>1</sup>

9. Support of veterinary organizations and measures for the eradication of contagious diseases among domestic animals.<sup>2</sup>

The following municipal expenditures are paid from county funds:

1. Expenses in connection with soviet elections.<sup>3</sup>

2. Organization, equipment, and support of institutions for mothers and infants, maternity hospitals, and hospitals for social diseases.

3. Disbursements in connection with the operation of agricultural and horticultural experiment stations.

The provincial funds finance the following undertakings:

1. The support of intermediary-technical schools which are not financed by the state.

2. Teachers' training schools and conferences.

3. The organization, equipment, and support of psychopathic hospitals, surgical, and ophthalmological institutions, health resorts, convalescent homes, sanatoria, bacteriological institutes and laboratories, meteorological stations, various hydro-therapeutic sanatoria, agricultural and agronomic expositions and courses, dormitories and feeding stations for unemployed and quarters for troops.

#### MISCELLANEOUS EXPENDITURES

The city soviets must make the following provisions: the payment of

<sup>1</sup> The state supplies part of the funds for this purpose.

<sup>2</sup> The Financial Decree instructs executive committees to authorize city soviets to widen and extend their fields of activity only in proportion to the increase of their financial resources.

<sup>3</sup> This does not apply to the expenses in connection with the election to the city soviet itself, but to congresses of soviets only.

loans and interest on indebtedness, sums designated for special funds, the meeting of unpaid bills of the previous year, capital to be used in the organization of local banking institutions and corporations, the necessary legal reserve constituting the emergency fund, and medical care of insured persons.<sup>4</sup> The law permits the city soviets to include in the budget an item for unforeseen expenditures; this must not, however, exceed three per cent of all disbursements. The city funds are administered by the financial agencies of the executive committee<sup>5</sup> and must be deposited with sub-treasuries of the commissioner of finance.

Municipal finance, like all other phases of city administration in Soviet Russia, is still in the experimental stage. No doubt in time the central government will learn by experience that detailed control of all local activities tends to destroy initiative and eventually reacts disastrously upon city welfare. However, it is fair to state that times are not ripe as yet in Soviet Russia to permit urban communes an existence unfettered by strict supervision, and frequently even petty interference from above. No doubt as the years go by Russian cities will demand and obtain governmental status commensurate with their responsibilities.

<sup>4</sup> These accounts are kept separate and are not included in the budget.

<sup>5</sup> The practical administration of the funds is in the hands of the directors of the municipal branches of the executive committees. (See writer's article on *Municipal Government in Soviet Russia*, in *NATIONAL MUNICIPAL REVIEW* for January, 1930.)

## RECENT BOOKS REVIEWED

REGISTRATION OF VOTERS IN THE UNITED STATES. By Joseph P. Harris. Washington: The Brookings Institution, 1929. 390 pp.

This book offers a practical solution of one of the greatest problems connected with election procedure at the present time, and should be carefully studied by everyone interested in the prevention of fraud and increased efficiency in this important governmental function. While considerable progress has been made during the past decade towards improvement of the electoral system, until recently very little thought has been given the subject of registration, but it has now come to be a recognized fact that elections cannot be properly safeguarded without an adequate system of enrollment for those qualified to vote.

With the exception of a few instances where progressive measures have been taken to improve registration conditions, most of our states and major cities are still operating under antiquated systems of various forms and descriptions, and Dr. Harris' work, in addition to much interesting and carefully prepared comparative data, sets up a very practical system and a standardization of registration methods which could be made applicable in principle throughout the country.

Believing that public affairs should keep pace with modern business methods, Dr. Harris, after an extensive survey and analysis of existing conditions, has evolved a standard system for the permanent registration of voters. Through training and wide experience he is eminently well qualified to undertake this important work, and the practicability of the methods he advocates is evidenced by the fact that permanent registration is now operating successfully in several of our states and larger cities, Ohio and Michigan being the latest converts. The legislatures of these two states adopted permanent registration codes, modeled after Dr. Harris' plan, which become effective in 1931 and 1932 respectively. This book cannot be recommended too highly to those interested in public affairs generally, and particularly to officials and civic organizations concerned with improved election standards.

O. E. DISTIN.

Chief Supervisor,  
City Election Commission, Detroit.

PRINCIPLES OF JUDICIAL ADMINISTRATION. By William F. Willoughby. Washington: The Brookings Institute, 1929. xxii, 662 pp.

Professor Willoughby has written a very useful book. It is a review of contemporary aspects of judicial administration in the United States from the standpoint of, and essentially for the use of, the political scientist. It enters both the civil and the criminal sides of the subject and describes with reasonable detail the most important current problems in administration, the changes that seem to be taking place and various proposals for reform. As Professor Willoughby states in the preface, the book presents a considerable number of quotations from the best recent literature of the subject. An extremely valuable bibliography is attached which in itself would be adequate justification for the publication of the book. Where the author has himself undertaken to discuss the subject matter the style is lucid and the selection of illustrations apt.

The book begins with several chapters under the not-quite-appropriate title of "Prevention" which discuss the prevention of crime, administrative justice, conciliation, arbitration, declaratory judgments and advisory opinions. The reason for the selection of the general title is that crime and litigation are of the same species of undesirables—a highly debatable point. Part II is "Enforcement" and in the main is a description of those agencies largely in the field of criminal justice which concern the preparation of cases for trial, such as the prosecutor, police, coroner, grand jury, and preliminary hearing. Part III concerns the courts as an administrative system. Part IV discusses the selection of judicial personnel and the problems connected with judicial tenure. Part V is called "Procedure," in which there are treated certain procedural rules which have been subject to discussion in recent criticisms of the courts and also the jury as an institution. Quite appropriately the book ends with a treatment of "Legal Aid" considered as a problem involving the ways and means by which the service of judicial government may be invoked by all sorts and conditions of citizens upon fairly even terms. It would be easy to quarrel with the selection of subject matter in any book which attempts to cover so much of life as is included in such a title.

When selection becomes necessary, private judgments will differ. My own judgment is that Professor Willoughby has made an admirable selection of subjects and has performed intelligently the incredibly difficult task of classification.

Professor Willoughby states in his preface and makes the dominant note in his book the proposition that judicial administration is just a plain question of doing things, with regard to human relations, through governmental agencies. In this respect he sees it as no more recondite than supplying pure water to a city or any other problem of governmental administration. This sort of treatment is distinctly valuable, and perhaps because it is so simple, most unusual. In bringing this fresh attitude to bear upon a question which legalism has traditionally obfuscated, Professor Willoughby has distinctly added to the understanding of things temporal and useful. He has moreover followed the method of political science beyond this point of clarified description into the realm of reform by reconstruction. Perhaps this is a lesson that our lawmakers and those who elect them should learn. Certainly the past twenty-five years of political science have contributed a great deal to the simplification of the administration of government. It can probably make an equally valuable contribution to the administration of justice.

RAYMOND MOLEY.

Columbia University.



AMERICAN CIVIC ANNUAL, Vol. I, 1929. Washington, D. C.: American Civic Association. 288 pp.

In this first three-hundred-page book, the American Civic Association sets a milestone of progress, both in its own affairs and in the municipal, state and national efforts towards physical perfection. Ten years ago much that may now call for annual chronicling scarcely existed. The purposes of the association, as originally presented, in 1904, are "the preservation of outdoor beauty with the attendant promotion of landscape art and the civic improvement of towns and cities." It has had a prominent part in bringing about the progress which has been made in these fields, particularly in the last decade.

The special projects of the association—control of billboards, preservation of Niagara Falls,

planning of the Federal City, maintenance of high standards in the selection of national parks, preservation of roadside beauty—are all recorded in some detail as being in a healthy condition, with further progress certain. To round out the picture, authoritative articles are included on all the principal phases of national and state recreational and forest lands and the progress of regional and of city planning, the latter subdivided categorically into "building projects, park and garden progress, civic progress, two famous street associations, and new towns and subdivisions." A unique feature is a "Who's Who in Civic Achievement" setting forth the activities of each of the association's members.

While this first annual has had perforce to chronicle broadly the progress in many fields during many years, future numbers may be expected to give more detailed accounts of actual accomplishment in a single year on specific projects. The book furnishes a valuable service to the practitioner and members of official and unofficial committees and an inspiration to all who are in any way awake to the achievements of the present day.

ARTHUR C. COMEY.



SUFFRAGE AND ITS PROBLEMS. By Albert J. McCulloch. Baltimore: Warwick and York, 1929. 185 pp.

This little volume contains a summary of the suffrage changes which have taken place in this country from the very earliest times. It is based primarily upon the colonial charters and the state constitutions. The secondary material which the author uses in interpreting these changes is, unfortunately, out of date. He cites no book which was published after 1918 and most of his magazine references date back to the nineties. The author's failure to consult recent materials leads him into several glaring errors. Here is an example: (p. 162) "While suffrage has reached its widest extent in America, yet a larger per cent of the qualified electors vote in the United States than elsewhere." This might have been true in the eighties, but it has not been true during the past thirty years.

The Negro, the woman, and the foreigner are the suffrage "problems" which the author discusses. Why the woman is a suffrage problem, it is hard to see. The author simply gives a statutory history of woman suffrage. In discussing the other two problems, the author

naïvely displays his own prejudices. The book is obviously written by a white, Protestant, Anglo-Saxon, conservative, who would be supported by the Ku Klux Klan and the Chamber of Commerce if he ran for office. The author's prejudices lead him to make many statements which are not capable of proof. One of these (p. 143) is the following: "The core of the evil (city misgovernment) is the foreign voter."

In spite of the inaccuracies regarding the operation of the suffrage and in spite of a repetitious and homiletical style the author has given a useful compilation of constitutional provisions regarding suffrage.

HAROLD F. GOSNELL.



THE GOVERNANCE OF HAWAII. By Robert M. C. Littler. Stanford University Press, 1929. 281 pp.

Professor Littler starts with an indictment of American political scientists when he says, "I could locate in the standard texts on American Government only a few brief descriptive paragraphs about Hawaii, and these paragraphs had been so obviously copied one from another that there had resulted an intellectual inbreeding which perpetuated some rather patent errors."

Professor Littler has done well his professional duty in giving us this systematic, scholarly, readable, and quite sympathetic description of the organization and functioning of government in our mid-Pacific territory. For the benefit of the American reader there is an excellent brief account of the geography, climate, ethnology and history of the islands in the first few chapters. There is an interesting chapter on the constitutional status of Hawaii as a part of the Union. There are ten chapters on the territorial government, two on the government of Honolulu, and one each on county government, the federal government in Hawaii, and "An Appraisal."

This very productive archipelago in a salubrious, sub-tropical climate is politically unique because of its racial situation, having a population of 134,000 Japanese, 60,000 Filipinos, 37,000 Americans and north Europeans, 29,000 Portuguese, 25,000 Chinese, and only 21,000 Hawaiians.

It is this most interesting political situation

that Professor Littler has presented with such rapidity and sympathy after several years of study in the archipelago while teaching political science at the University of Hawaii. An idea of the sheer interest of the book may be gained from the following paragraph:

"Meetings of the legislature are gala events. At the first session there is always much music and there are many 'leis.' Hula girls are there to dance. Even during the session it is not uncommon to devote a few minutes after the morning prayer to some good singer or dancer, and the legislators frequently join in the festivities and exercise their vocal and terpsichorean skill."

This "formal" occasion fits in naturally with Professor Littler's description in Chapter I of the Hawaiians as a people who "decline to take life seriously, insist on having an easy and pleasant time on this earth, and feel sorry for those who do not do likewise."

The only item of government ignored in the book is that of the village. The author has not told us who provides the human touch in the small community as does the "barrio teniente" in the Philippines.

In referring to the attitude toward American sovereignty to be found in Hawaii as contrasted with that in Porto Rico or the Philippines, Professor Littler concludes, "The explanation of this phenomena must lie outside the field of political behavior." Apparently it has not occurred to him that a century of independence agitation in a Spanish colony creates a magic shibboleth of "independencia" in the minds of the "dependent" peoples, whereas the "independent" Hawaiians of 1890 had no such illusions as to the magic of "independencia." Furthermore, a relatively homogeneous people like the Porto Ricans or the Filipinos readily evolve a racial egotism that does not arise spontaneously among a *minority* group of aborigines. The blatant urge to self-realization does not arise so readily in the immediate presence of an overwhelmingly superior mass of alien population.

We would be fortunate indeed if other American political scientists should write up our other "outlying possessions" as accurately and sympathetically as Professor Littler has "done" Hawaii.

O. GARFIELD JONES.

**ELECTRICAL UTILITIES: THE CRISIS IN PUBLIC CONTROL.** William E. Mosher, Editor. New York: Harper & Brothers, 1929. 335 pp.

This study was made under the auspices of the School of Citizenship and Public Affairs of Syracuse University. With the exception of a single chapter on holding companies, the book has been produced by six members of the teaching staff of that university under the leadership of Professor Mosher. The authors collaborating in the writing of the book are interested in various fields: economics, engineering, politics, sociology, psychology, and law. In spite of these varied interests, they have succeeded remarkably well in unifying their work, so that we have a distinct contribution to the literature dealing with utilities.

Although the book centers about the electric utilities, many of the problems discussed at length are equally important in other utility industries. To that extent the title is misleading, for the contents of the book are much broader; they are, perhaps in the main, of equal or considerable applicability in the entire field of utility control.

The authors evidently did not allow themselves to be burdened with any preconceived notions and dogmatic beliefs. They have made only a single assumption, or, more correctly, they allowed one implication to be drawn—namely, that it is desirable to control utility services. But they do not hesitate to declare that it is quite possible that we may witness an abandonment of such control altogether in the future.

The crisis, as they visualize it, consists in the halting, piecemeal, haphazard actions, or lack of action, among those who are charged with utility control, and the seeming indifference of the public generally to the problems that have arisen since modern utilities and their control have come into being. They see utility control confronted with a parting of the ways. At one extreme we have the possibility of public ownership and management; at the other, absolute private exploitation

for profit. Whether one of these two extremes is to gain the upper hand for the next fifty years, or whether a mean between them, public control, will be continued, depends on the policy pursued by commissions, legislatures and courts in the near future.

The book is divided into two parts: Part I contains a wealth of data relative to the capacity, utility, consumption, etc., of the electrical industry, as well as an outline of the difficulties under the present system of control. Both of these lead to the conclusion that we are at the point where decision is essential.

Part II "is devoted to a consideration of various types of public control that might contribute to the solution of the crisis described in Part I." However, this part is not confined entirely to mere abstract discussion of comparative methods.

An appendix shows, in tabulated form, the organization, salaries, powers, etc., of the various utility commissions, which should be handy for reference purposes.

As the book does not propose any cut-and-dried solution, the reviewer is not obliged to agree or disagree with any particular thesis. One may, perhaps, doubt that we have reached a critical period in utility regulation, to the extent that whatever action, or inaction, is pursued in the immediate future will necessarily decide public policies toward the utilities for the next fifty years. The reviewer has a lurking suspicion that we may continue to muddle through, democratic fashion, just as we have been doing, for quite some time to come, and yet not really take a definite step in one direction or another.

But the value of the book is not to be looked for in any particular thesis. It contains information and analyses that are almost indispensable to the student of regulation. It should also prove useful for collateral reading and reference purposes, to teachers and students of public utility courses.

NATHANIEL GOLD.

The College of the City of New York.

## REPORTS AND PAMPHLETS RECEIVED

EDITED BY WELLES A. GRAY

*Assistant Director, Municipal Administration Service*

**City Planning.**—By John Nolen, New York, 1929. Pp. 513. Here is the second edition of this well known volume in the National Municipal League Series. With the exception of one or two revisions and the addition of two new chapters, it is practically identical with the first edition. Chapters on Zoning by Edward M. Bassett, and Regional Planning by John Nolen have been added. The chapter on City Planning Legislation has been entirely rewritten and brought up to date by Alfred Bettman, as has the introduction by Frederick Law Olmsted. It is regrettable, however, that some of the other chapters, and more particularly the various bibliographies, were not revised in the light of developments since 1916, the original date of publication.

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**A Guide to Material on Crime and Criminal Justice.**—By August Frederick Kuhlman, New York, The H. W. Wilson Company, 1929. Pp. 633. This is a descriptive listing which brings together, as far as is possible, essential data on the more important published materials on crime and criminal justice. Its object, to quote the preface, is twofold: "First, to index, describe, and classify as completely as possible, existing materials on crime and criminal justice in the United States, in a single volume; and second, to show by means of the Union List Library symbols, libraries in which the research student may gain access to this material." It lists 13,276 separate monographs, books, pamphlets, and magazine articles on crime and its punishment, issued through 1927. A most important contribution, not only to the literature of criminology, but also to the growing list of bibliographical materials on special phases of public administration.

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**Municipal Beverage Ordinances.**—By Ford H. MacGregor, Municipal Information Bureau, University of Wisconsin, Madison, October, 1929. Pp. 33. (Mimeographed). This treatise deals with regulating and licensing the sale of beverages in Wisconsin cities. Three aspects of

this problem are discussed: the enforcement of federal prohibition, the regulation and sale of non-intoxicating liquors containing less than one half of one per cent of alcohol, and the sale of soft drinks, containing no alcohol whatsoever. The authority of cities to enact such ordinances is the main topic of discussion. It includes a collection of representative beverage ordinances now in force in Wisconsin, and a table which sets forth the essential provisions of these ordinances in force in 38 cities.

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**Protection of Electrical Circuits and Equipment against Lightning.**—Preliminary report of the Sectional Committee on Protection against Lightning. Miscellaneous Publication, Bureau of Standards, Washington, D. C., No. 95. September 12, 1929. Pp. 107. This study will be of particular interest to persons having to do with building codes and light and power plants. It sets forth tentative conclusions, as reached by the committee, and presents them for criticism and suggestion.

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**A Guide for Preparing Annual Police Reports.**—By the Committee on Uniform Crime Records, International Association of Chiefs of Police. Revised edition. December, 1929. Pp. 36. The first edition of this *Guide* was issued in 1928.<sup>1</sup> Since that time the committee has completed its study, *Uniform Crime Reporting*, and as a result of that study certain modifications and changes were found to be necessary in the *Guide*. Hence this revision, which was published simultaneously with *Uniform Crime Reporting*. It is based upon the kind of records now maintained in many departments, and is designed to facilitate uniform crime reporting throughout the United States.

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**A Playground Handbook for Chamber of Commerce Executives.**—By the Civic Development Department, Chamber of Commerce of the United States, Washington, D. C., July, 1929.

<sup>1</sup>See NATIONAL MUNICIPAL REVIEW, April, 1929, p. 257.

Pp. 72. A handy manual which contains much pertinent and valuable information on playgrounds, their value, methods of acquisition, equipment, layout, etc. A draft enabling act and model playground ordinance are included. There is a bibliography.



**Quarterly Bulletin of Recent Publications on Municipal Government and Administration.**—By the Reference Department, Oakland, California, Free Library, December, 1929. Pp. 15. (Mimeographed). A compilation of recent books, pamphlets, and magazine articles on various specialized phases of city government and its administration.



**Annual Report of the United States Civil Service Commission.**—By the Commission, Washington, Government Printing Office, 1929. Pp. 140. This report is of particular interest in view of two developments in the federal civil service during 1929, the completion of the examinations for the personnel of the Bureau of Prohibition and the fingerprinting of federal employees. Of general interest is the story of how one of the largest employers in America handles the problem of recruiting personnel.



**The Cost of County Government.**—By the Board of Wayne County Auditors, Detroit, September 30, 1929. Pp. 19. This is an analysis of the budget for Wayne County (Detroit), Michigan, covering the years 1925-1929. Its intent is "to indicate the purposes for which county funds are being expended and the general trend of such expenditure during the past four years."



**Through Streets.**—By the National Safety Council, Chicago, 1930. Pp. 46. Here is a long needed discussion of an important phase of traffic regulation. The advantages of through streets are fully discussed, as are also the things that such streets will not accomplish. Planning and designing these streets, and the various ways and means of establishing them are given full treatment.

**Procedure and Time Required to Authorize Loans of the City of Philadelphia.**—By the Bureau of Municipal Research of Philadelphia, November, 1929. Pp. 50. (Mimeographed). This report traces all loans of the city from their inception to their authorization. It discusses electoral, councilmanic, emergency, and other loans. Three appendices give a condensed time schedule for the enactment of loan ordinances, the provisions of the state constitution relating to municipal loans, and the provisions of the "charter" of Philadelphia on this subject.



**The Regulation of Minor Highway Privileges in Cincinnati.**—By the Cincinnati Bureau of Governmental Research, May, 1929. Pp. 59. (Mimeographed). This report takes up in detail the whole problem of minor highway privileges. Although it deals specifically with Cincinnati, there is much in it that would be applicable to any city. Of particular value are the recommendations for levying the charges for these privileges.



**The Sinking Fund of the County of Hamilton.**—By the Cincinnati Bureau of Governmental Research, July, 1929. Pp. 13. (Mimeographed). A study of the sinking fund of Hamilton County (Cincinnati), Ohio. It includes an evaluation of the moneys now in the fund, and a thorough analysis of its administration.



**An Analysis of 11,180 Misdemeanor Cases.**—By the Cincinnati Bureau of Governmental Research, January, 1930. Pp. 21. (Mimeographed). This analysis is of immense value to all criminologists and students of law enforcement. It covers all arrests for misdemeanors during the six-month period, January 1 to June 30, 1929. It shows, in tabular and graphic form, the distribution of cases according to offenses charged, color, employment and unemployment, age and residence. Arrests by hours and by days of the week, and the disposition of the cases in the municipal court are also given.

# JUDICIAL DECISIONS

EDITED BY C. W. TOOKE

*Professor of Law, New York University*

**Streets and Highways—Prohibition of Parking in Congested Districts.**—The extent of the control which city authorities vested with the power to regulate traffic may exercise has been clearly defined by the Supreme Court of Illinois in the recent case of *Haggenjos v. Chicago*, 168 N. W. 661. The case came to the court by an appeal from the conviction and fine of the defendant for parking an automobile in the loop district, as to which the city ordinance provided that no person owning, controlling or operating any vehicle should cause or permit it to stand on any public street or alley between the hours of seven in the morning and six-thirty in the evening, except upon Sundays and holidays. Proper exceptions were made in favor of emergency use by public vehicles of the city and of hospitals and public utilities; as to all others the prohibition was absolute.

In holding that the ordinance was unreasonable and consequently void, the court conceded the necessity and the power of the city to make such regulations as are reasonable, but emphasized that the rights of abutting owners to access and the incidental requirements of loading and unloading of passengers and merchandise could not be taken away. As to what might be reasonable regulation, the court said:

The streets in the district included in the ordinance were congested with vehicles, and the situation no doubt called for action by the council prescribing regulations which would relieve the congestion and provide for the freer movement of traffic than was possible under those conditions. The occupation of both sides of the streets by parked vehicles reduced the space left for travelers, and was a contributing cause to the congestion of traffic. It might have been a reasonable exercise of power by the council to restrict the right to stand on the streets to a short time, or to prevent it altogether at certain hours and in certain parts of the territory, but it was not a reasonable exercise of the power to prohibit the standing of any vehicle on the streets for any purpose, or for any time, so as to prohibit throughout all the business hours of every business day the free use of the streets, in a reasonable way, to the people within the territory mentioned, and those desiring to transact business with them, to have reasonable and convenient access by auto-

mobile to the various parts of the territory described in the ordinance for the transaction of business and the receipt and delivery of goods in the ordinary way.

The opinion, however, is especially valuable in pointing out the limits as to the construction of ordinances by the courts. Counsel for the city maintained that the ordinance should be so construed as not to inhibit reasonable use of the streets by adjoining owners or by others for purposes necessarily incident to traffic. Upon this point, the court said:

There is no exception in the generality of the language on account of the purpose of the standing, but it must be construed in connection with other portions of the traffic ordinances, which require stops under certain circumstances, and it could not be regarded as a violation of the ordinance to stand on the street during a stop which is required by another ordinance of the city, or by traffic conditions at the time and place. The language must be interpreted according to the ordinary meaning of the words. According to that meaning, it prohibits every person from permitting a vehicle to stand on the street. The meaning of the language is not ambiguous, and there is nothing in the context or circumstances which justifies giving the language any different meaning. There is therefore no room for construction.



**Excess Condemnation—No Power to Take Excess Lands after Improvement Is Completed.**

—In the recent case of *In re Monroe Avenue in the City of Rochester*, 237 N. Y. S. 147, the Appellate Division of the Fourth Department ordered dismissed a proceeding to take by eminent domain additional lands for purposes of resale after the street improvement in connection with which the city instituted the proceeding had been completed. By condemnation in 1926 of land for a street extension, the city found itself the owner of a surplus corner plot abutting the new street of about 165 feet in length and 18 feet deep. To the rear of the plot ran a private alley, known as Cheney Place, 16 feet in width, which the city authorities sought to acquire so as to make a salable lot with a frontage of 34 feet on one street and 165 feet on the other.

Notwithstanding that the extension of Monroe Avenue had been completed and that no part of Cheney Place abutted on the avenue or was intended to be made use of as part of the street, the city insisted that it had a right to condemn the land under section 2 of its charter which gives to the city power "to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets, provided, however, that the additional land and property so taken shall be no more than sufficient to form suitable building sites abutting on such park, public place or street."

This section was added to the city charter by the constitutional amendment of 1913, which provides:

The legislature may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased.

In reversing the order sustaining the proceeding, the court, in an able opinion by Justice Edgcomb, said:

The right to take the property of an individual in invitum, which is not to be used and enjoyed by the public as a part of a public improvement itself, is an innovation in the law of eminent domain. In view of this drastic change in the long-established practice of allowing private property to be taken only when it is to be used as a part of some public improvement itself, I do not believe that we should read into this statute, or the constitutional amendment which authorized it, unless the language employed clearly warrants such construction, authority to permit the respondent to condemn this excess land long after Monroe Avenue had been laid out and thrown open to the public, and the land necessary therefor had been acquired. I find nothing in the act or the constitutional amendment which indicates any intention to permit subsequent condemnation proceedings to be instituted for the sole purpose of acquiring land for speculative purposes long after the property actually needed for the public improvement itself had been acquired. On the contrary, the last part of the constitutional provision, which legalizes the lease or sale of the excess land after so much thereof as is necessary for the public improvement has been appropriated, fairly indicates that

the surplus land must be acquired in connection with that needed for the improvement itself.<sup>1</sup>

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**Taxation—Exemption upon Consideration Upheld.**—The Supreme Judicial Court of Massachusetts on November 26, 1929, handed down an important decision upholding the right of the plaintiff to recover taxes paid under protest, upon the ground that the taxpayer was entitled to a contractual exemption. (*Thayer Foss Co. v. City of Woburn*, 168 N. E. 734.)

The plaintiffs were successors in title to certain persons who prior to 1880 discharged the waste from their tannery into the headwaters of Mystic Pond, one of the sources of the water supply of the city of Boston. In 1879 the owners deeded a portion of their lands to the city for the construction of the Mystic Valley sewer, which was designed to protect the municipal water supply. The sole consideration for the transfer was set forth in a clause of the deed as follows:

It is hereby mutually agreed by us and said city (the assent of the city being evidenced by its acceptance of this instrument) that there shall be no obligation upon the part of ourselves or our heirs and assigns to keep said sewer upon our said estate in repair and in good order, or to make any compensation for its use.

The city of Woburn, the successor in title to the sewer from the city of Boston, collected a tax of \$356.80 from the plaintiff for the use of the sewer. In deciding that the plaintiff should be permitted to recover the monies so paid in an action at law, the court held that the contract in the deed inured to the benefit of the successors of the grantor and that they could recover the taxes collected from them.

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**Zoning—Reasonableness of Ordinance.**—In *City of North Muskegon v. Miller*, 227 N. W. 743, the Supreme Court of Michigan affirmed a decision setting aside a zoning ordinance on the ground of unreasonableness. The action was brought by the city to restrain the defendant from drilling for oil on lands located within a zone restricted in use to "single-family dwellings, churches, schools, libraries, farming and truck gardening, and private clubs." After the discovery of oil in the vicinity in 1928, another ordinance had been enacted, requiring a permit from the council before starting drilling operations.

<sup>1</sup>A note on the Ohio statute on excess condemnation may be found in the October, 1929, issue of the REVIEW, page 639.

The defendant had made two efforts to obtain a permit, which had been refused, and then had proceeded with drilling operations.

The evidence established that the land in question was in a low, marshy section, adjacent to the city dump and occupied by market gardens and small shacks, and not likely to be in demand for city residence purposes so far as could be anticipated. Under these conditions, the court held that the restrictions in the use were unreasonable and the ordinance void as not bearing a substantial relation to the public health, safety, morals, or general welfare.

Reasonableness must be the test of legality of any zoning ordinance and when, as in the instant case, the effect is to deprive the owner of a large part of the value of his property without any corresponding benefit to the public, the courts will set it aside. For another case dealing similarly with an ordinance that would take away the right to reclaim oil or minerals, see *Terrace Park v. Errett*, 12 Fed. (2d) 240.



**Zoning—Restriction upon Use of Vacant Land by Manufacturer Upheld.**—In *American Wood Products Co. v. City of Minneapolis*, 35 Fed. (2d) 657, the Circuit Court of Appeals, Eighth Circuit, affirmed the decision of the District Court, upholding the validity of a zoning ordinance restricting the use of plaintiff's property to non-manufacturing purposes. A full report of the facts of that case and the decision were printed in the December, 1927, issue of the REVIEW, page 796, in which it was pointed out that Judge Sanborn recognized fully the injustice of the restriction, but felt bound by the legislative act of the city as determinative of the necessity for such an exercise of the police power.

Since that case was decided, the Supreme Court has handed down its decision in the case of *Nectow v. Cambridge* (277 U. S. 183), in which it was held that a city had no power to restrict the extension of a manufacturing plant on lands long used in connection therewith, unless it appeared that the restriction had some direct relation to the conservation of the public health, safety, morals, or convenience. The decision in the instant case is based on the finding of the trial court that the ordinance is necessary for the proper development of the lands adjacent to the state university as sites for homes of the instructors, and that such finding is conclusive. The real question involved in the case is whether

there should be the same presumption of the reasonableness of an ordinance as of an act of the state legislature. Many courts hold that in conferring powers, the legislative intent is that they be reasonably exercised and that such reasonableness is to be determined in a proper case by the courts. It would seem that where the individual's property rights are seriously interfered with, there should be no presumption as to the reasonableness of an ordinance, but that in such a case the court should determine the question without throwing the burden of proving the reasonableness or unreasonableness of the ordinance upon either party to the controversy.



**Municipal Broadcasting Station—Proper Use.**—The operation of the municipal broadcasting station known as WNYC by the City of New York promises to be a source of considerable legal controversy. In a recent decision, noted in this REVIEW (Vol. XIX, No. 1, page 52, January, 1930), it was held that this station was subject to regulation by the federal radio commission, and the present case (*Ford v. Walker*, 237 N. Y. S. 545, decided December 6, 1929) was brought to test the uses to which the station could be put by the municipal authorities. The station was originally established pursuant to a resolution of the board of estimate and apportionment authorizing an appropriation for its installation and construction "as an adjunct to the police and fire departments and such other departments as may require or use such service."

The nature and scope of the programs broadcast from the municipal station has for some time been the source of public comment and criticism, and it is not surprising, therefore, that a legal adjudication upon the situation should be sought.

The instant case was a taxpayer's action which charged that the station had been unlawfully used for broadcasting the proceedings at various unofficial and private gatherings, and that such use was threatened to be continued. This complaint had been dismissed for insufficiency, and the Appellate Division, First Department, in a *per curiam* opinion reversed the dismissal holding that the complaint stated a cause of action.

The court, after calling attention to the constitutional provision prohibiting the use of public money for private purposes (Const. Art. 8, § 10), declares that:

The board of estimate and apportionment was careful not to violate this provision when it

adopted the resolution authorizing the construction of the broadcasting station. The resolution distinctly provided that that station was to be used as an adjunct to the police and fire departments and to such other departments "as may require or use such service." In the absence of further action by the board of estimate and apportionment, the city may expend funds for the maintenance of the broadcasting station only in so far as it is used for the purposes set forth in the resolution authorizing its construction. The uses complained of are not those of the police department, the fire department, or any other city department.

With this restrictive construction upon the use of the station laid down as the rule of the case, it will be interesting to note what effect this and the subsequent disposition of the case will have upon this municipal activity.



**Extra-Mural Powers—Supplying Electric Service to Outlying Districts.**—The power of municipalities to exercise police powers beyond their territorial limits when authorized by the legislature is generally recognized, subject to the rule that no two municipalities may exercise the same powers upon the same territory. In *Holmes v. City of Fayetteville*, 150 S. E. 624, the question

was raised whether the city, under legislative authorization, could engage in the business of supplying electric light and power to the inhabitants of extra-mural districts. The statute gave the city full power thus to extend its lighting and water service for three miles beyond its limits and to fix rates for such service different from those charged its own citizens. It was contended that the act was special in character and a violation of the provisions of the state constitution requiring general laws for the creation of all corporations and for the amendment of their charters.

In upholding the power of the city, the Supreme Court of North Carolina calls attention to the decisions in that state restricting the constitutional amendment to private corporations, and meets the contention of the plaintiff, that the city, in exercising the function of selling electricity, is to be regarded as engaged in a private corporate activity, by expressly affirming the public character of the service provided. All the powers of a municipality are necessarily governmental in character, and the distinction between proprietary and governmental powers as a test of liability in tort should not be extended to other fields where it has no application.

# PUBLIC UTILITIES

EDITED BY JOHN BAUER

*Director, American Public Utilities Bureau*

**Los Angeles Five-Cent Fare Franchises Invalid.**—In its latest decision on the subject, the Supreme Court of the United States took a long stride toward reducing municipal franchise restrictions upon street railway rates to the vanishing point. The case came on appeal from the district court of the Southern District of California. The Los Angeles Railway Corporation, in November, 1926, applied to the railroad commission of the state of California for permission to charge a seven-cent cash fare, or four tokens for twenty-five cents, instead of five cents, the maximum fixed by the franchises granted to the company. In March, 1928, the commission rejected the application, on the ground that the company had earned an average annual return of 7.1 per cent; that it was not being efficiently operated; that the management had failed to introduce certain economies previously recommended, which would have increased its net earnings; and that for these reasons, the existing five-cent fare was just and reasonable.

In June, 1928, the company brought suit in the federal district court to have the rates and the order of the commission adjudged confiscatory. The court found the facts as alleged by the company, and by its decree permanently enjoined the commission from enforcing the five-cent fare. On appeal to the Supreme Court, the issue was narrowed down to the legal consideration of the fare fixed by the franchises. The commission and the city of Los Angeles contended that the franchises constituted valid contracts, and prevented the company from charging more than a five-cent fare. The company contended that the city did not have the legal power to fix rates by contract, and even if it had the power, that the contracts as to rates had been abrogated when the commission assumed jurisdiction in the present case, and when, in an earlier case, a small increase had actually been allowed but was rejected by the company.

In its decision of December 2, 1929, the Supreme Court upheld the contentions of the company. Mr. Justice Butler wrote the majority opinion. The decision was not unani-

mous. There were three dissenting judges—the same three who have frequently found themselves at variance with the majority. Justice Brandeis wrote a dissenting opinion, joined in by Justice Holmes. Justice Stone agreed generally with Justice Brandeis, but wrote a separate dissenting opinion. The legal phases of the decision were presented briefly last month by C. W. Tooke in the department of Judicial Decisions. Our remarks are directed more to questions of reasonable policy with respect to state and local rate control.

## FEDERAL COURTS AND REGULATIONS

The Los Angeles case brings up sharply a situation which has caused a great deal of serious reflection, also irritation, on the relation of the federal courts to the entire scope and procedure of intrastate rate control. This applies not only to municipal franchises, but also to cases where intrastate jurisdiction comes in contact with interstate relations, particularly valuation and rate-making.

We are here concerned not only with law, but with underlying economic and public policies. Interstate regulation is properly concerned with what are really interstate utilities and services. As a matter of policy it would, of course, be a mistake to permit state and local interference with interstate business. But, conversely, it appears equally undesirable to have federal interference with activities which concern only individual states and local municipalities.

In some instances, it is difficult to separate satisfactorily what is fundamentally interstate, and what is intrastate and local. But, for the most part, electric, gas, water, and street railway properties are limited to intrastate and dominantly to local municipal service. Their proper regulation is, manifestly, a state and local matter. The entire system of rate regulation, whether by the legislature itself, by a single state commission, by separate commissions for individual municipalities, by franchise, or by a variety of combinations, does not come within the province of the federal government. It should be left en-

tirely to state policy and administration, except as to final appeal on questions of confiscation after the highest state courts have spoken. This is common sense, and should be translated into law. If this independence is not possible under present legal conditions, then there should be congressional action limiting the federal courts to actual interstate activities, and conveying to the state courts complete jurisdiction over state regulation instituted under state laws.

Consider again the Los Angeles case. It applies exclusively to intrastate activities. The properties are located entirely within California, operated under California franchises, in a California city, subject to California laws relating to public utilities and municipalities. The Supreme Court simply should not be concerned with Los Angeles street railway rates. It should not be called upon or troubled to determine the city's rights, the limitations of local franchises, the purposes and scope of the state statutes, and the ultimate significance of the state constitution. If it cannot escape this extraneous burden under present law, the law should be changed as a matter of rational policy of government.

The case came into the federal courts through the constitutional provisions forbidding the taking of private property without due process of law, after the commission had decided against the company. Under present conditions, the company probably could not have been stopped from raising the particular question under the federal constitution. Hence, on an entirely local matter, which, of course, should have been settled within the state, under state law, and by the state courts, it was able to invade the lower federal court, and pass to the Supreme Court, with an egregious waste of time and effort and obvious distortion of what should be proper state and federal relations.

While, of course, the company will retain its rights under the federal constitution, why should it not be held, in first instance, to deal with the municipality which granted the franchises and the state under whose laws the franchises were exercised?

#### STATE ACTIVITY

When rates have been fixed, a company which is dissatisfied may immediately evade the state adjudication and rush into federal court, because of its federal right to just compensation. Of course, it is entitled to a fair return, and its right must be fixed under due process of law, without

confiscation. It must, of course, have the right to appeal from the action of the commission, which may be unreasonable and arbitrary. But why should it not proceed through the state courts when the entire subject-matter is state and local; why deny to the state courts the opportunity to construe the state statutes, local franchises, municipal charter, and state constitution?

There is no suggestion that the federal right should be destroyed—this, quite obviously, could not and should not be done. But there is no reason why all these matters should be brought, in first instance, to the federal court, to clog up judicial administration, multiply vastly the total responsibility and burden placed upon the Supreme Court, and arouse irritations between local and federal government. Why should not the state commission be recognized as the trial court to determine the facts? Why should not the record thus made be first subjected to appeal or review by successive state courts? Would this procedure not assure the most satisfactory disposition of all legal questions with respect to local franchises, state laws and constitution, or with regard to the validity of rates fixed by the commission? If, however, the company, or any party, feels aggrieved after the highest court of the state has spoken, there would then be time for federal jurisdiction and final decision by the Supreme Court of the United States, whether there was violation of due process and confiscation of private rights.

#### DETERMINATION OF FACTS

There is not only the determination of state law, but the vast range of technical and financial facts. In the ordinary rate case, the law is simple but the facts are complicated. In fixing rates, the state commission must base its order upon findings of fact not only with respect to valuations and rate of return, but also operating costs, conditions of service, classification of rates, and probable revenues to be expected. The task is an enormous one, all but prohibitive under ordinary circumstances, and requires close and continuous contact with the company and the properties.

But after the order has been issued, all the laborious and costly processes come to nothing when the company enters the federal court. Then a master is appointed to report on whether the rates are confiscatory. Normally, he knows nothing about public utility rate-making, about the properties, or about any of the technical

processes. He does not receive the record and exhibits from the commission, but makes a new record throughout, and receives evidence which had not been placed before the commission. He reports his findings to the court which for practical reasons must accept them. And then the case goes to the Supreme Court, which is virtually bound by the findings of the master who was not competent to decide upon most of the questions of fact.

There is a basic procedural evil in the disregard of the record made before the commission, which because of its closer contact with the properties and its greater technical knowledge and assistance is normally more competent to make proper findings than the federal master. The federal appeal results not only in duplication of expensive legal processes, but also in grossly inefficient treatment of complicated and difficult facts, while subjecting state policy to federal control and determination.

During the past year we have had occasion to review the Interborough Rapid Transit Company seven-cent fare case. This was concerned with municipal contracts duly made under state law, and involved an intricate series of state legislation, complicated with various constitutional provisions. The matter arose before the state transit commission. The company moved rather surreptitiously to the federal court. The question of jurisdiction was raised immediately. The lower federal court, however, retained jurisdiction and issued an injunction. The matter was carried to the Supreme Court, which, in that particular case, did order the cancellation of the injunction, and held the matter subject to state determination. The Interborough decision suggested that, perhaps, the Supreme Court itself would help to point the way to keep the federal courts from being clogged with state and local litigation. The Los Angeles case, however, rather indicates that the hope was unfounded. Perhaps the Supreme Court is helpless and cannot prevent the invasion of the federal courts by local litigation.

The recent New York Telephone case is another example.<sup>1</sup> The New York public service commission, in 1926, fixed the rates for this company after an extended investigation and determination of facts. The company immediately went to the federal court for an injunction. A special master was appointed, who knew virtu-

ally nothing about the properties, or about valuation and rate-making. All the facts and issues had to be tried *de novo*. The waste of time and expense was enormous. The master reported to the court, whose decision could not be authoritative, because it could not rest upon adequate knowledge of technical facts. The case may go to the Supreme Court, which will then be confronted by nearly 40,000 pages of testimony and a "carload" of exhibits and documents. What can the Supreme Court do, as to actual consideration and determination of the issues? It will be hopelessly lost in the intricacies and multiplicity of details, and it should not be burdened with the task and responsibility.

#### LIMITED FEDERAL JURISDICTION

This flooding of the federal courts with matters of state and local public utility regulation is one of the important factors which have helped to destroy the effectiveness of state regulation.

Perhaps the simplest course would be congressional action limiting the jurisdiction of the federal courts in state public utility cases to appeal after decision by the highest court of the state. By such limitation, the local matters would be kept within the state courts, but there would be no interference with the final federal right of due process. If any party still feels aggrieved, after the highest court of the state has spoken, he would still have the right of federal protection. But the possession of this right should not enable a company to evade state regulation and the interpretation of state law by the state courts.

Such federal legislation as here suggested has been proposed by the so-called Bacharach bill. We hope that this measure will be revived, or a suitable law passed by Congress to deal adequately with the situation.



**Higher Fares in New Jersey.**—The Public Service Coördinated Transport Corporation of New Jersey put into effect radical fare changes as of January 1. Its general level of rates has been five cents for a continuous ride within a single municipality. It serves practically all of northern New Jersey as well as certain other sections of the state. It operates both street railways and busses in a "coördinated" system.

The new schedule provides for a single fare of ten cents, and ten tokens for fifty cents. The zones remain virtually as before. The mass of riders who require daily service are thus able to

<sup>1</sup>This case will be reviewed next month in a special article by Mr. Nathaniel Gold.

continue at the old fare through the purchase of tokens, while casual riders will be required to pay a 100 per cent increase. This change has aroused a great deal of public criticism. It has been approved, however, by the state board of public utility commissioners as a temporary expedient to test out the effect upon revenues and service. It will probably be subjected to an inquiry before the commission after a reasonable period of trial.

The extraordinary feature of the schedule is the wide difference between the single fare and the token rate. The system of a higher single fare and lower token rate has been put into effect frequently, but there has seldom been a difference of more than a cent and a half or two cents between the single fare and the token rate. The ten cents and five cents offer a challenging differential. If, however, the company is actually in need of greater revenues to cover the cost of service and obtain a fair return, there is a good deal to be said for the wide spread. There are not only important factors of economy in favor of the much lower token rate, but there is also the matter of public policy in distinguishing the casual and regular riders.

Perhaps the principal cause of irritation is the great piling up of fares for single-fare riders who pass through two or more zones. There are numerous combinations where a ride of two to five miles will call for an aggregate fare of twenty to forty cents. These results are plainly unreasonable. There should be at least the modification that the double fare shall apply only to the first zone, while the fare for subsequent zones be left at five cents per zone. Such modification would probably meet the bulk of the public criticism.

There is, however, the fundamental question, whether a higher fare than five cents is really needed for the *modern* part of the "coördinated" system. There is reason to believe that the busses could readily be operated with an adequate return at a five-cent fare under the present zoning system. But five cents is probably not sufficient to bring also a fair return on the street railway properties on the basis of ordinary valuation. So there is widespread opinion that bus operation should be kept distinct from the street railway, and should be required merely to pay its own way. It has been opposed to the consolidation of bus and street railway operation. It is skeptical of the sonorous term "coördination," and looks upon the combination as an effort to make good for the company the investment in

obsolete street railway properties, to mask the bus profits with the street railway losses.

The public at large would probably be greatly benefited if street railway operation were abandoned in its entirety, and the service limited to busses. This would mean more satisfactory service, at lower cost, and at the same time would furnish the congested sections with an increase in street capacity for the rapidly increasing vehicular traffic. The transportation problem in northern New Jersey, as in other urban sections of the country, has been handled in piecemeal fashion and with extreme tenderness for street railway investment, at great cost to business as well as to riders.

The time has come when not only the great mass of riders, but also all business and industrial interests of northern New Jersey, should take stock of what the present system is actually doing in the retardation of commercial progress of the territory. At an increasing rate for the past five years, Newark, for example, has permitted the driving away of business, especially shopping, through intolerable street congestion and unsatisfactory transportation. During a large part of the day, particularly during morning and evening rush hours, the principal thoroughfares radiating into the suburbs are choked by street cars. Traffic could be handled much more expeditiously and economically by busses, and the streets could thus be made available for at least 100 per cent greater vehicular traffic.

We have given emphasis to this problem in New Jersey because the same conditions prevail in practically every city which is struggling with street railways, fares, service, traffic congestion, and retardation of business.



**Extensions of Service.**—Because of the rapid growth of municipalities, especially suburban communities in large metropolitan areas, new sections have been built up in recent years without thorough legal consideration of streets and the rights of property owners. In such instances, purchasers have often assumed that the streets had been laid out and dedicated to the municipality, when actually no such legal processes had taken place, and when the owners actually had title to the land occupied for street purposes. In these cases the question has arisen as to the right and obligation of the city, or a public utility, to make property extensions and to furnish service to the property owners.

Such a special case arose recently with respect

to water service in the city of Mount Vernon, one of the larger suburbs of New York. The practice of the municipality had been not to extend the water mains into a street until full conveyances had been made by all the property owners. In the particular instance, some of the owners refused to make the conveyance, and attempted to obstruct the extension of water mains in a street which other owners had assumed to be a part of the city streets. In a recent opinion by the corporation counsel, J. Henry Esser, the position is taken that the city does have the right to extend water mains through such streets, even though they have not been formally conveyed to

the municipality. The opinion holds that no owner can stand in the way or exact compensation for the privilege. It holds that water pipes are a part of the general easement for the common use of the thoroughfares.

Presumably, the same view applies to other utilities which are essential to modern community welfare. A city- or privately-owned utility is thus enabled, and, at least morally, is in duty bound, to furnish extensions through any municipal street, even if there had been no formal conveyance to the city. The law thus appears to be in harmony with common sense applied to public utility service.

# MUNICIPAL ACTIVITIES ABROAD

EDITED BY ROWLAND A. EGGER

*Princeton University*

**Housing in Belgium.**—Belgium has, in recent months, taken decisive steps in the direction of meeting the housing crisis which for some time has confronted her industrial areas. M. Vinck estimates that, at the present time, lodgings are needed for almost 100,000 people in these regions. The National Housing Association of Belgium has attempted, with private funds, to alleviate the suffering which this shortage has created by the construction of lodgings for about 13,000 people. This construction program has already been entered upon and it is expected that approximately 4,300 lodgments will be constructed annually over a three-year period. It has been evident, at the same time, that the problem is too stupendous adequately to be handled by private enterprise. The country is confronted concurrently with the problem of renovating its slum areas, which is, of course, the complicating factor in almost every large-scale housing program.

In recognition of the importance of this project, the Belgian government recently has authorized the issuance of bonds on the public credit to the extent of 300 million francs, for the construction of working men's houses. These will rent at a figure inadequate to meet the debt charges on the bonds issued. The law provides that this difference shall be met by the state, the province, and the commune, in the proportion of five-eighths, one-eighth, and two-eighths, respectively.

It is interesting to note that the majority are to be multiple dwellings of 32 apartments, of which eight are five-room flats and 24 are of four rooms. It is estimated that, with the differentials established for the site increment, etc., the bonds which have been issued will be retired within 55 years. Substantial provision has been made for maintenance, replacements, and repairs.

All in all, this represents one of the most thoroughgoing projects which has been advanced in any country for the solution of the housing

problem. By the time the plan is completed Belgium will have eliminated its slums, will have made a substantial contribution to national economic stability, and at the end of the time will have on hand a state trading corporation which will doubtless be made a paying proposition for the government.—*Le Mouvement Communal*, November, 1929.



**Communal Integration in Germany.**—The Rhenish-Westphalian industrial region of the *Deutsches Reich* has recently been the theatre of one of the most thoroughgoing territorial integrations in the whole of Germany's local governmental readjustment. Prior to reorganization this district contained thirty cities and twenty-two rural circles; in this area there were 7,966.46 sqm. supporting a population 6,400,000 people. Under the law of July 10, 1929, the entire region, within its original boundaries, was completely reconstituted. There are now twenty-six *stadtkreise* and only twelve *landkreise*. The region is very highly industrialized; the industries, furthermore, are distributed throughout almost the entire area. The average population density is 803 persons per sqm., extraordinarily high for a non-metropolitan region. It should be remembered, however, that this district is the most highly industrialized section of the *Reich*, and probably of Europe.

This territorial readjustment is peculiarly significant for its boldness of attack upon the problem of territorial and functional integration. The readjustment involved no alteration of the relation of the classes of local governmental areas to the provincial and state authorities, or to each other. The region is frankly not a closely knit economic unit, and cannot be treated as such. The Rhenish-Westphalian *Verwaltungseinteilung* should be of especial interest to all students of regional planning and regional government, as indicative of German opinion regarding the limits of centralization.—*Der Städtetag*, September 27, 1929.

**Greater Hamburg.**—Germany is experimenting in the solution of her metropolitan problem. The most recent metropolitan consolidation is in the hinterland of the *freistadt* Hamburg. It is interesting from a number of points of view.

In the first place, the political status of Hamburg—a free city—precludes the possibility of territorial readjustment by ordinary measures. Hamburg is, for practically all purposes, upon precisely the same legal plane as Prussia. The condition in the Hamburg metropolitan area is, then, comparable to a number of metropolitan regions in the United States. For example, the Chicago region extends into Wisconsin and Indiana; New York into New Jersey and Connecticut; St. Louis into Illinois; while Buffalo and Detroit really lie partly in Canada.

The administrative organization of the new Hamburg region is modeled very closely upon that of the Port of New York Authority. Its governing body is composed of political representatives of Prussia and Hamburg, chosen from the region included within the consolidation. Since the whole of Hamburg is in the new region, the project is, for her purposes, federal in character. The proposed designation of the Prussian representatives by the Prussian government, however, takes the consolidation out of the category of true municipal federalism.

The initial problems to be considered by the new regional government are concerned chiefly with canalization in the upper Elbe, the formation of a regional plan for the entire area, the adoption of measures for the preservation of parks and open spaces, and kindred functions.

At the last meeting of the American Political Science Association, Dr. Thomas H. Reed called attention to the possibility of solving the problem of the interstate and international metropolitan region by treaty. It is in this connection that the Hamburg consolidation should be of primary interest to American regional experts and planners. While the international situation is complicated by considerations of customs barriers and immigration, the interstate situation is not appreciably dissimilar to the consolidation described. The integration and consolidation of metropolitan regions, wherever located, is a task which eventually must be confronted. Legal fiction is not as compelling as economic reality. The German extension of the theory

underlying the New York Port Authority will be scrutinized critically by American students and administrators.—*Städtebau*, Heft 5, 1929.



**Metropolitan Consolidation in France.**—The French Parliament is considering two projects which propose to remedy the present inadequate legal basis of metropolitan government in the Republic. One of these applies specifically to the Parisian region, while the other is general in application. At the present time the extent to which regional services may be undertaken is severely circumscribed by the law relating to the *syndicats*, which does little more than permit several communes to combine for the letting of public utility contracts—chiefly gas, water, electricity, and interment of the dead, a French communal monopoly. Concerning the projects of larger regional interest, such as transport, housing, and the like, little has been accomplished. Of course, nothing has been attempted in the equalization of governmental costs between the metropolitan centres and their suburban areas.

The Parisian problem is peculiarly compelling. The historic city within the fortifications is indeed an aesthetic triumph; but the miserable towns which have grown up in the *banlieu* are a reproach to the French social consciousness. M. Sellier has for a good many years been calling attention to the unhealthy and unlivable character of these Parisian suburbs. To be sure, in 1919 and in 1924 the government did arouse itself to the extent of proclaiming the obligation of the communes to coöperate in certain matters of arterial highways, parks, planning, etc., but its action was largely histrionic and the results have been meager. The government seems unable to forget the days of the Revolution. Too, the prefect of the Seine is about as important a political figure as the president of the Republic. Furthermore, the *banlieu* is overwhelmingly communistic.

In March, 1928, M. Albert Sarraut, then minister of the interior, presented a memorandum on the subject of a regional government for the Paris area to parliament, with which it has since been dallying in its customary manner. M. André Tardieu has made public his intent to force the matter to its conclusion, looking ultimately to the inclusion of all urban territory within the region under the government of the Seine, probably in a manner to some degree

analogous to the federated plans of London or Berlin.

Too many projects for the solution of the problems of the Parisian region have come to an untimely end behind the closed doors of the deputies and senate committee rooms for those familiar with French politics to hope for overmuch.—*Le Mouvement Communal*, November, 1929.

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**The Port of Berlin.**—There is a certain novelty in thinking of the capital of the *Deutsches Reich* as a port. Situated far inland, and having only the shallow, sluggish, muddy Spree as the nucleus of a canal network, the development of water transportation in the Berlin region seems all the more remarkable. As early as the middle of the thirteenth century, when Berlin and Köln united, the water transport net was begun. The construction of the Müllrose Canals, connecting the Spree and Oder, and of the Finow Canal connecting the Havel and Oder extended the system. The Plauer Canal of 1745, connecting with the Elbe, and the Rhine and Ruppiner Canals constructed between 1770 and 1796 further developed the water net. The time intervening has witnessed the constant widening and deepening of this network, as well as the construction of most complete docking and storage facilities. The recently completed Mittelland Canal, uniting the Rhine and Oder, permits the transportation of 1,000-ton ships throughout almost the entire area, and caps the development of a most remarkable water transport system. During the last year 15,300,000 tons were received at Berlin docks, while 4,900,000 tons were exported. It is in no small part due to this efficient and economical transport system that Dr. Böss waxes justifiably eloquent over Berlin's excellent connections with its hinterland.—*Städtebau*, Heft 11, 1929.

**Home Rule and Efficiency.**—One of the acutest problems confronting Germany at the present time is that of effecting an adjustment between the popular demand for local self-government and the tradition of rigid centralized administrative supervision and control. The fiscal stringencies in which the Reich has been placed as a result of the war appreciably has complicated this problem; in fact, German cities are unquestionably less free now than under the Empire. Of course, the precarious financial condition of the central government, under the burdens of reparations payments, precludes the possibility of substantial *selbständigkeit* being extended to the localities in the matter of taxation. It is the sociological aspect of self-government for German cities, rather than its practical possibilities, which chiefly interests Dr. Walter Norden of the University of Berlin, however.

Dr. Norden believes that in laying the groundwork of a healthy and vigorous political life in its local governmental areas, the state is assuring its own continuance and progress. In coping with the difficulties of post-war reconstruction and restabilization, practical conditions must be met, but it should be remembered that such conditions are clearly abnormal and that local self-government, short only of *Kompetenz-Kompetenz*, is the most propitious environment for the development of an interested local polity. Dr. Norden, in another place, has made the point that the over-politicizing of German municipal administration in post-war years is an incident, but not a necessary incident, of the new German democracy. The apparent difficulties and inconsistencies between the desire for local freedom, and the demands for efficiency and economy as exemplified in the old bureaucracy, are not insusceptible to rational treatment.

The problem which Dr. Norden discusses is not confined to Germany, nor to local government.—*Der Städtetag*, October 29, 1929.

# GOVERNMENTAL RESEARCH ASSOCIATION NOTES

EDITED BY RUSSELL FORBES

*Secretary*

**Recent Reports of Research Agencies.**—The following reports have been received at the central library of the Association since December 1, 1929:

Cincinnati Bureau of Governmental Research:  
*An Analysis of 11,180 Misdemeanor Cases.*  
Civic Affairs Department, Indianapolis Chamber of Commerce:

*The Campaign for Economy in the 1930 Public Budget of Indianapolis.*

Bureau of Public Research, Jacksonville, Florida:  
*Information Every Citizen Should Know.*

Civic Development Department, Chamber of Commerce of the United States:

*A Playground Handbook for Chamber of Commerce Executives.*

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**California Taxpayers' Association.**—The analysis of the governmental organization, receipts and disbursements of the city of Pasadena, for the fiscal year ending June 30, 1928, has been completed and will within a very short time be transmitted to the Pasadena city committee of California Taxpayers' Association and to the city directors of that community.

The report recommends that the Pasadena city charter be abandoned and a new one drafted, based upon a recognized, scientific plan maintaining the council-manager form of government.

The survey shows that, in the eight-year period from 1921 to 1928, percentage increases in fiscal items were as follows: receipts from taxes and sources other than bonds, 207 per cent; population, 47 per cent; assessed valuation, 147 per cent; expenditures for maintenance, 189 per cent; total expenditures including outlays, 307 per cent. It is shown that expenditures are increasing in the city of Pasadena at a rate faster than the sources producing the revenue which pays for them. During the last eight years Pasadena has turned to bond issues as a means of financing many public improvements. This plan was found to be very costly. The bonded debt per capita on January 1, 1929, was

found to be \$141 while the average for a group of ninety-eight cities of comparable size was \$69. A pay-as-you-go plan of financing improvements is recommended.

A recommendation is made that the city ordinance which created the city planning commission be revised to define the work of planning and to provide more effective administration.

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**The Taxpayers' Association of New Mexico.**—The Association is assisting the state comptroller's office in checking the expenditures under the county budgets for the fiscal year ending June 30, 1930. At the suggestion of the Association the state comptroller sent out letters requesting a report as to warrants issued against the various county funds during the first half of the fiscal year. In addition to the report of warrants issued, the county clerk, who keeps the budget control record, is required to send in a list of all unpaid claims. The warrants issued plus the unpaid claims represent the obligations incurred against the budget in each fund; and the budget allowance, less the total of the warrants and the claims, shows the balance available against which indebtedness may be incurred for the second half of the fiscal year.

As the reports come in from the thirty-one counties of the state, the staff of the Taxpayers' Association will check them and report conditions to the state comptroller, who will call attention of the local authorities to any overspending.

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**Schenectady Bureau of Municipal Research.**—The Bureau has begun its preliminary work on the police survey and the garbage and ash survey and a great deal of data have already been gathered in the few weeks in which attention has been devoted to these problems.

In conjunction with the New York State Conference of Mayors, the Bureau is now engaged in the preparation of a supplement to the fall radio series given over WGY and associated

radio stations. This experiment in civic education by radio has been so successful that broadcasting authorities have requested sixteen additional weekly talks. This may logically develop into the broadcasting of governmental activities as a permanent radio feature. The complete new program will be published in a few weeks.

City authorities have approved the printing of the long-term financial program and it is expected that several thousand copies will shortly be available for distribution. With the printing of the program, the Bureau plans to undertake an intensive campaign for the establishment of a capital budget commission which will supervise the actual carrying out of the long-term plan.

A meeting was held with the charities committee appointed by the head of the League of Women Voters at which the managing director of the Bureau presented data on social welfare organization gathered on recent trips to Buffalo and Cleveland. It was the opinion of the committee that steps should be immediately taken to centralize Schenectady's welfare work. It is now planned to hold frequent conferences with leaders in all phases of social work in the city in order to arrive at some agreement concerning unified welfare activity.

The Bureau hopes to have 850 members by January 1, 1931. In addition to utilizing the services of a full-time membership solicitor, rotating committees composed of prominent citizens and members of the Bureau will be formed to recruit new members.

**Tokyo Institute for Municipal Research.**—The Institute is publishing a series of pamphlets under the title: *The Toshi Mondai* (The Municipal Problems). These pamphlets are printed in Japanese for the most part, but include an index in English to current literature in the United States and European countries. In some cases these reports reprint English articles translated into Japanese.



**Bureau of Civic Affairs, Toledo Chamber of Commerce.**—A study of street paving construction practice in ten cities has just been completed by the Bureau of Civic Affairs. The study was undertaken to ascertain how the paving practices in Toledo compared with those of other cities. It was found that the average cylinder test for concrete base is 2,200 pounds, whereas the strength specification for Toledo is 1,500 pounds, the lowest of any city studied. Other parts of the study include preparation of the subgrade, thickness and type of base, aggregate specifications, curing specifications test for sheet asphalt and other asphaltic pavements, qualifications and pay for inspectors, type and quality of pavement testing, guarantee for new pavement by the contractor, and the period during which cuts are not allowed to be made in new pavements.

A committee is studying the results of the survey with the view to making recommendations to the city engineer for the improvement of specifications and testing practices which should give Toledo better pavements in the future.

# NOTES AND EVENTS

EDITED BY H. W. DODDS

**Regional Plan Proposes Elaborate Civic Center.**—One of the first projects now being brought forward by the Regional Plan of New York and Its Environs is a proposal for a future civic center to be developed at City Hall Park, Manhattan. In common with nearly all other plans for the treatment of this park, the present proposal provides for the removal of the Post Office, the Hall of Records, and other public buildings between Chambers Street and City Hall.

A monumental structure covering two square blocks and rising to a height of one thousand feet, with a frontage on the north side of the park, will dominate the scene. In proposing such a high building, the Regional Plan explains that it is not opposed to high buildings *per se*, that the vital consideration is the control of bulk and not the control of height. Anticipating that high buildings are certain to be erected on the site selected for the civic center, the Regional Plan staff believes that a large area should be assembled and that the buildings erected thereon should be in keeping with the national importance of the metropolis.

The Regional Plan, in suggesting an imposing building as appropriate for New York's civic center, goes on record as believing in unrestricted height on 25 per cent of the lots with a lessening of height on the remainder.



**Home Rule or Ruin?**—Stewart Browne of the United Real Estate Owners' Association of New York may have no national fame but he is a well-known local Jeremiah. One can imagine him pointing to the members of the board of estimate of New York City who have just helped themselves to \$60,000 a year from the city treasury and saying "I told you so," for he always called home rule "home ruin." The mayor of New York is now to receive \$40,000 which, not to mention pension benefits, automobiles and expense allowances, makes him clearly the second highest paid elective official in the country. Many of us see no reason why this should not be so but there was no little objection

to the manner and propriety of the increase. Though there was not a whimper about their then-not-too-modest salaries in the November campaign, the members of the board of estimate, all of whom were reelected, proceeded, under an emergency message from the mayor, to raise the salaries for their successors on January first. There is some remote prospect of taxpayers' action to halt this "gold rush" of our ten greediest cases, but it is probably safely within the letter of the home rule law.

Buffalo, too, has had its home rule powers turned to unexpected use. The new charter adopted two years ago penalized the members of the city council one-fiftieth of their year's salary for absence from any meeting. No excuses were permitted. The council having squirmed under this rule for two years has passed a charter amendment permitting itself to excuse absences by a two-thirds vote. This provision which the charter makers set great store by goes gaily out of the window.

The distress of these two cities at this kind of home rule might be less were it at all apparent that the city's broad home rule powers were also being put to constructive use.

JOSEPH MCGOLDRICK.



**A Detective Story.**—The ghost of Arnold Rothstein hovered over the New York mayoralty campaign, but though Mayor Walker was unable to lay it, it is not clear that it appreciably influenced the election. The only serious echo was the disclosure that Mr. Walker's manager, Magistrate Vitale, had at one time borrowed \$20,000 from the famous gambler. But he assured his public that he had paid it back and the incident was allowed to drop. Election over, he went to Virginia for a hard-earned rest. His return was the occasion of a modest banquet in his honor by the Tepecano Democratic Club, of which he is (or was) president.

There was nothing unusual about this except that in the course of the evening seven gunmen entered and relieved the guests of their money and various trinkets. Among the latter was the



*Regional Plan, New York*

*Francis S. Swales  
Architect*

REGIONAL PLAN PROPOSAL FOR NEW YORK'S FUTURE CIVIC CENTER

gun of Detective Johnson who was seated at the guest table. Johnson was promptly suspended and brought to trial on a miscellany of charges, the police commissioner having learned that at least seven of the forty guests had criminal records. At the trial it was explained that the gun had been returned within a few hours by Magistrate Vitale himself.

But the big news was the story told by Inspector Donovan, who had investigated the case, that the holdup was in fact a fake. It seems that one *Ciro Terranova*, the "Artichoke King," whom Mr. Whalen calls the *Al Capone* of New York, had entered into a written contract with a Chicago expert whereby the party of the second part, in consideration of \$20,000 was to "bump off" *Frankie Yale* (né *Uale*) and *Frank Marlow*. Despite the fact that this written agreement had been faithfully and competently performed by the gentleman from Chicago, *Terranova* was reluctant to pay. Threatened with dire consequences, including exposure, it occurred to him to have his Chicago friend come to the Vitale dinner to receive his payment there. The holdup, so Inspector Donovan would have us believe, was aimed at this unusual murder contract and was a complete success, save for the complications which afterward set in.

While the magistrate was busy explaining to the district attorney, the police, the bar association and the press, the circumstances of this party and the rather amazing roster of the *Tepecano Club* (it is said that this is a Bronx spelling of *Tippecanoe*), the U. S. district attorney, still running down the late Mr. *Rothstein's* narcotic activities, raided a Harlem speakeasy and found that the proprietor and brains of a national, wholesale, retail and mail order "dope" ring carried a little black book of *Numbers Frequently Called* and among them was that of Magistrate Vitale. We are also waiting to hear of an interesting folder from the *Rothstein* archives also bearing the magistrate's name.

JOSEPH MCGOLDRICK.

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**Kansas City Police Case Before Supreme Court.**—The suit of the police commission of Kansas City against the city, which opened October 15 before a special commissioner, now rests with the Missouri Supreme Court. It originated in the refusal of the Democratically controlled council, acting on the advice of City Manager *H. F. McElroy*, to grant the \$1,530,000 appropriation request of the Republican police

commissioners. The council granted \$1,150,000 which the commissioners contended was inadequate and refused to accept. July 1 the commissioners brought mandamus proceedings against the city. Such controversies are frequent in Missouri, laboring as she does under the absurd, archaic state police statutes of 1875.

The city claimed that the commissioners' request was not reasonable, that if the funds were properly used the amount allotted would be adequate, and that the police department hired Republicans merely to give them jobs. The counsel for the police argued that, according to the statutes of 1919 and the latest Supreme Court decision, "the city council is required to appropriate the sum requested by the commissioners." Since the governor had instructed the commissioners to take the department out of politics, it was evident that it was the purpose of the Democrats not only to show that the police department is partisan but to secure any information that would be good campaign material for the city spring election.

After a two weeks' examination of the commissioners concerning every detail of police work, the city announced that testimony would be taken in Minneapolis, Cincinnati, Indianapolis and other comparable cities. By December 8, when the case was resumed in Kansas City, public opinion had forced the immediate termination of the trial.

Since the police department has been spending at the rate of \$1,400,000 a year, it is likely that the commissioners will either have to reduce the personnel or persuade many men to work without salaries. It is not probable that the Supreme Court will render a decision before April 1, the end of the fiscal year.

The most valuable by-product of the case has been the realization by a large number of people that a nonpartisan city administration is necessary. Whatever the outcome, the taxpayers resent a dispute which was unnecessary and intensely partisan.

D. I. CLINE.

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**Dedication of the Social Science Research Building, University of Chicago.**—The Social Science Research Building at the University of Chicago, occupying a position on the university campus adjacent to and east of Harper Library, filling in the Midway front at the university, was dedicated with appropriate ceremonies on December 16 and 17.

The dedication was widely attended by guests from various parts of the country and was made especially notable by the presence of three persons invited for the occasion from abroad: Sir William Beveridge, director of the London School of Economics and Political Science, Professor Célestin Bouglé of the Sorbonne, and Professor Albrecht Mendelssohn Bartholdy of the University of Hamburg. Sir William Beveridge delivered a series of six lectures on unemployment in Great Britain in the week previous to the dedication.

The ceremonies, which were held for the most part in the Assembly Room of the Social Science Research Building, were opened by an address of dedication delivered by President Hutchins. Following this address Professor Wesley C. Mitchell of Columbia University read a paper entitled "The Function of Research in the Social Sciences." At the close of the morning exercises Professor A. Mendelssohn Bartholdy delivered a very interesting address in defense of bureaucracy.

The company adjourned for luncheon to the Hotel Windermere where representatives of seven University Research Councils made brief addresses. The speakers were: Wilson Gee, Institute for Research in the Social Sciences, University of Virginia; Howard Odum, Institute for Research in the Social Sciences, University of North Carolina; Murray S. Wildman, Stanford University Council; Max S. Handman, University of Texas Council; Donald Slesinger, Yale Institute of Human Relations; Arthur M. Schlesinger, the Milton Fund of Harvard University; Wesley C. Mitchell, Columbia University Council.

In the afternoon Dr. Edwin R. Embree, president of the Julius Rosenwald Fund, presided over an interesting session devoted to two papers, one by John C. Merriam, president of the Carnegie Institution, entitled "Significance of the Border Area between Natural and Social Sciences"; the other by Dr. M. C. Winternitz, Dean of the Yale Medical School, on "Research in the Medical and Social Sciences."

In the evening a banquet was served at the Shoreland Hotel over which President Hutchins presided. He introduced first Sir William Beveridge who spoke on the subject of "International Cooperation in Social Science" and who was followed by Dr. Harold G. Moulton, president of the Brookings Institution, who spoke on "Coöperation in Social Science Research."

The ceremonies continued on Tuesday morning with a stimulating address by Professor Célestin Bouglé, delivered in French, on the subject, "The Present Tendency of the Social Sciences in France." He was to have been followed by Professor Boas of Columbia University but because of the death of Mrs. Boas in an automobile accident the day preceding, he was unable to be present. In his place Professor W. F. Ogburn read a paper on "Some Problems of Methodology in the Social Sciences."

At the luncheon presided over by President Walter Dill Scott, papers were read by Dr. Beardsley Ruml, director of the Spelman Fund, on "Recent Trends in the Social Sciences," and by C. Judson Herrick on "The Scientific Study of Man and the Humanities." This part of the dedication ceremonies was brought to a close by "A Word in Conclusion," delivered by Professor C. E. Merriam.

The final event took place at the autumn convocation which was held Tuesday afternoon at three o'clock. The convocation orator was Professor E. B. Wilson, president of the Social Science Research Council who spoke on the subject of "What Is Science?"

Honorary degrees of Doctor of Laws were conferred upon Sir William Beveridge, Albrecht Mendelssohn Bartholdy, Célestin Bouglé, and Wesley C. Mitchell.

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**Chicago to Reorganize Police Administration.**—The long-expected plan under which a group of university presidents, criminologists and other educators and scientists, designated more than a year ago, would reorganize the Chicago Police department was made public on January 10. It had been unanimously approved by a citizens' advisory committee composed of forty-eight business and professional men.

Among the changes called for in the new scheme are:

Reduction of special units directly responsible to the commissioner from twenty to eight.

Taking from the shoulders of the commissioner of a mass of minor detail and placing such matters in the hands of the eight department heads and others.

Conversion of the chief deputy commissioner into an assistant chief of police "in fact."

Redivisioning of the city into six instead of five police divisions.

Creation of a system of inspectorships to be filled by captains.

Grouping of all police activities under six general heads, namely a director of personnel, chief of detectives, chief inspector, inspector in charge of traffic bureau, department secretary in charge of records and property, and inspector in charge of the morals division. These officials, the secretary to the commissioner, and the deputy commissioner, would make up the eight department heads.

Bruce Smith of the National Institute of Public Administration, an expert in police organization, is the author of the plan.

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**Survey of Salaries.**—The Los Angeles County Bureau of Efficiency has published a *Survey of Salaries*, paid comparable positions in the Los Angeles County Service, in the Los Angeles City Service, and by 155 private concerns in Los Angeles County.

The charter of the county of Los Angeles provides that in "fixing compensation to be paid to persons under the classified civil service, the board of supervisors shall, in each instance, provide a salary or wage at least equal to the prevailing salary or wage for the same quality of service rendered to private persons, firms or corporations under similar employment in case such prevailing salary or wage can be ascertained." In January and February, 1929, the Los Angeles County Bureau of Efficiency conducted an investigation into wages and salaries paid for corresponding positions to 8,699 employees of the county of Los Angeles, 13,320 of the city of Los Angeles and 29,772 working for private concerns. Parallel columns give the results in median, average, modal, maximum and minimum salaries. For the purpose of arriving at some sort of general conclusion the writer has examined 83 categories where comparison with private employment was available using the median salary as a base. It was found that the county paid more than private employers in fifty-five classifications and less in twenty-eight. The city paid more for forty-eight of the categories, less for twenty-two and the same in one case. For twelve the figures for the city were not available. It is conclusively demonstrated that from the monetary standpoint public employment in the

area considered does not suffer in comparison with service in private concerns.

JOHN M. PFIFFNER.

University of Southern California.

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#### County Home Rule Amendment in New York.

—The voters of New York state at the election on November 5 approved an amendment to the state constitution to limit the power of the legislature over the form of government which the counties of Westchester or Nassau may adopt under existing home rule provisions. All laws which have to do with the creation or abolition of elective offices in these counties, the method of removal of elective officers, the reduction of salaries or change of terms of office of elective officers during their terms, or abolish, transfer or curtail any of their powers, or change their voting or veto powers, or laws which affect the form or composition of a legislative body, or provide a new charter for the county are not to be effective without approval by the electors of the particular county.

All other special or local laws affecting these counties after passage by the legislature must be transmitted to the clerk of the governing elective body of the county affected, to be approved or disapproved by such body after public hearing, and by the executive head of the county if there be one. The bill is to be returned within fifteen days to the clerk of the house from which it was sent or to the governor if the legislative session has terminated, stating whether the county has or has not accepted the bill. No such bill shall take effect until sixty days after approval by the governor or adoption by the legislature over the governor's veto, nor until approval by the electors of the county if within sixty days a petition protesting against such bill be filed with the county clerk by electors numbering five per cent of the votes cast in the county at the last election for governor. If during the legislative session the bill is returned to the legislature without the acceptance of the county, or is not returned within fifteen days, it may again be passed by the legislature and acted upon by the governor, but shall not take effect unless and until adopted and approved by the electors of the county.

WATER POWER  
IN NEW YORK STATE

*By*  
A. BLAIR KNAPP

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# WATER POWER IN NEW YORK STATE

BY A. BLAIR KNAPP

*Electric power is rapidly becoming the dominant force in our industrial civilization. Its importance in the factory and home in the city and in the country daily becomes greater and greater. An important though admittedly not the most important portion of future power developments will be that produced from water power. New York State possesses valuable water power in its St. Lawrence and Niagara Rivers and its inland streams.*

*Despite the extent of this untapped wealth New York did not evolve a power policy until 1921. Even now it cannot be said to have settled upon a method of development and exploitation.*

*This is due to the fact that the two dominant parties have been at loggerheads with reference to this problem. Present indications point to a determination on the part of both to substitute action for words, and in such a situation a brief résumé of the fundamental positions of each may have some value. Space does not allow the description of the efforts of commissions prior to 1921. We lead you directly to the Water Power Act of 1921 which represents the Republican position, and which has been the policy adopted by the legislature of the state, but which has been nullified by the attitude of Democratic commissions charged with its administration.*

## CHAPTER I

### THE NEW YORK STATE WATER POWER ACT OF 1921

#### 1

WHEN Governor Miller came into office on January 1, 1921, the stage was all set for definite action upon the problem of water power development. The demands of the consumers for more electric energy had increased to a marked degree. The electric utility companies were literally combing the country for advantageous power sites which would enable them to meet this increased demand as easily as possible. Popular imagination had been stirred by the predictions which had been made in magazine articles, on the platform, and in the press with reference to

the possible economic and social results of abundant electrical power.

Congress had recognized the importance of the problem in 1920 by creating a Federal Power Commission which should have the authority to regulate power developments upon territory under the jurisdiction of the national government. The legislature at Albany had been debating and discussing the problem for over thirteen years. One administrative body after another had investigated, surveyed, and contributed its share to the volume of data concerning the water power resources of the state and their efficient exploitation. Still no comprehensive

plan had been enacted which would adequately take care of all the water powers of the state. This was due in part to the frequent disagreements between the two houses of the legislature or between the legislature and the governor.

In January, 1921, however, the Republican party found itself in control of both houses of the legislature with a steadfast Republican in the governor's chair. It was therefore so situated that it could write its power policy into law without serious opposition. It was the first time that either party had been in that strategic position since the water power problem had become of major interest. Governor Miller in his first annual message advocated immediate action on the part of the legislature. In general he recommended that the federal act of 1920 should serve as a model and that the recommendations of the conservation commission which was then in office should be followed. In other words, he called upon the legislature to frame a law in which the theory of private development under lease should be the fundamental idea. As a result of the popular interest, the pressure of the governor, the complete authority of the Republican party, and the example of the national government the Water Power Act was passed.

2

The act created a State Water Power Commission to be composed of the conservation commissioner, the state engineer and surveyor, the attorney general, the president of the senate, and the speaker of the assembly. The conservation commissioner was to be the chairman of the commission. All powers and duties with reference to water power development which had been delegated to other administrative agencies in the past were transferred

to the new commission in addition to the new provisions which were contained in the act itself. Such portions of the Conservation Law as had granted similar powers to the water control commission were annulled.

The new commission was charged with the duty of making "surveys and investigations" and collecting "data concerning the developed and undeveloped water power resources of the state" together with all necessary information relative to the location and potential power of the various sites and the cost of developing them. It was given the power to hold hearings, to inspect the projects completed and not completed, to examine all books, records, and accounts of any licensee and to require any licensee to produce before it any data which were deemed essential. It was to appear for and represent the state in all conferences with the authorities of the United States, the Dominion of Canada, or the province of Ontario, and was charged with the responsibility of setting forth the "just rights of the state" with reference to the development of its water powers. Upon it was conferred sweeping authority to make all rules and regulations necessary to put into effect the provisions of the law.

In addition to the foregoing general grants of power which in the main had also been given to previous agencies, the water power commission was endowed with the authority "to issue licenses in the manner and upon such terms and conditions as are hereinafter provided, and upon such other terms and subject to such other conditions, not inconsistent with this article . . . as the commission may determine to be proper in any particular case for the protection of the interests of the state." The law states that the licenses may be issued to "any citizen,

association of citizens of the United States, or to any corporation heretofore or hereafter authorized to develop, furnish, or sell power in the state, or to any municipality of the state." To such persons, corporations, or municipalities a license may be granted "authorizing the diversion and use for power and other purposes of any waters of the state in which the state has a proprietary right or interest, or the bed of which, or the real property required for the use of such waters or the right to develop water power is vested in the state." Similar diversion and use may also be authorized with reference to the "boundary waters of the state where the state has jurisdiction over the diversion or interference with the flow of the same solely or concurrently with any other jurisdiction or owner of a proprietary right." Subject to the proprietary rights of others authorization may be given for "the construction maintenance, and operation in, across, or along any such lands and waters, of such dams, reservoirs, diverting canals or races, water conduits, power houses, transmission lines, and other project works as are deemed necessary and convenient." In such terms did the legislature establish the policy of private development of water power in accordance with and upon the authority of a license to be drawn and issued by a commission which was created for this purpose.

## 3

The law rather definitely sets forth the procedure which shall be followed in granting the above-mentioned licenses. Each applicant for a license shall submit to the commission a formal application accompanied by such information relative to the proposed project as may be required. Such information shall include maps, plans,

specifications, and estimates of costs, all of which shall be considered part of the license when issued. If and when the proposed plans and specifications receive the approval of the commission or are altered so that such approval may be received, then the commission shall compute the annual rental charge to be levied for such license and shall inform the applicant or applicants of the amount of that charge. If the applicant or applicants accept the amount of the charge so fixed and determined and if they signify their willingness and offer evidence of their ability to perform all of the requirements of the license, to construct and maintain the proposed project and to pay the annual rental charge, the commission shall then give notice of such determination and set a time for a hearing at which it shall take action upon the application or applications for the project. In case there are two or more applicants for the license for a project the commission is required to award the license to the applicant whose plans are "most suitable for the proper development, conservation, and utilization in the public interest of the water power resources—and are most adapted to properly develop the water power site or sites covered in the application." In case it is impossible to determine which most completely fulfills these requirements, the order of preference is fixed as first to a municipality, second to a riparian owner, and third to the applicant first filing his application and plans with the commission.

The law also provides that under certain conditions "preliminary permits" may be granted "for the purpose of enabling applicants for a license—to secure the data and perform the acts" required of an applicant for a license. The purpose of this provision is to enable an applicant to maintain the priority of his application while en-

gaged in making surveys and preparing the various maps, plans, and estimates. Such a permit cannot be granted for more than a three-year period and not more than one permit may be in force for the same project at one time. Such permits are not transferable and can be revoked by the commission at any time for cause.

## 4

The most fundamental features of the Power Act are concerned with the licensing arrangement. The term of the license "shall not exceed fifty years." It must include the agreement of the licensee to abide by all the provisions of the Power Act and to pay the annual rental charge. The "terms and conditions" of the license may be modified only by mutual consent of the licensee and the commission. Certain powers of revision are also reserved to the superintendent of public works in case the license shall involve any canal or canal feeder waters. The annual rental charge fixed at the time that the license is issued is to continue for the period of the license unless revised and adjusted by the commission in the manner prescribed by law. This charge is also to be considered as part of the operating expense of the project. Failure to pay the charge to the state shall be cause for immediate revocation of the license. But in this event the state must pay the licensee the amount of the enhanced value of the state property resulting from any improvements made. This payment, however, is not to exceed the amount of the reconstruction cost of the project less certain deductions in case the licensee has a profit exceeding 8 per cent of the actual and reasonable cost.

Certain requirements with reference to the development and maintenance of the project must also be included in the license. These provisions include a

time limit for the construction of the project works and provide for periodic reports to the commission in which the progress of the project together with the costs thereof shall be set forth. Requirements that the license shall at all times keep the project in good repair and efficient working order are also to be included. Repairs and replacements may be ordered by the commission after investigations and hearings at which evidence of their necessity shall be set forth. The failure of the licensee to act in accordance with these provisions shall constitute cause for the revocation of the license. In case the license is revoked because the construction is not begun within the time limit, the licensee can recover no damages from the state. In case the revocation occurs after the construction has been begun, the state may elect to take title to all the works and structures erected on state land. Under such conditions payment may be made for the enhanced value of the land. The law also authorizes the use of the power of eminent domain with certain reservations.

In addition to the foregoing conditions in the license, the law requires that it shall include a provision to the effect that "upon the expiration of the license period any and all interest of the licensee in and to state property which is covered by the license, together with any and all structures and works thereon shall rest in and become the property of the state free and clear of any and all liens and encumbrances." There is a limitation to this provision, however, in that the commission may allow certain payments to the licensee on account of improvements to the property of the state. Such allowance shall not be greater than the reconstruction cost less deduction for the aggregate income over 8 per cent after expenses have been deducted.<sup>1</sup>

<sup>1</sup> "Reconstruction cost" of a project or any

The law also provides that "every license issued under this article for a project shall contain a provision expressly reserving to the state the right to regulate and control the use and distribution of the power generated by any licensee, and to fix reasonable rates to be charged by the licensee under all circumstances for furnishing heat, light, or power generated wholly or partly by the use of property covered in the license, and to regulate the service, capitalization, and secured debt of the licensee and the licensed project. Responsibility for this regulation is placed upon the public service commission which is to proceed upon the basis of the provisions of the public service law relative to "electrical corporations and of the manufacture, sale and distribution of electricity" which are reaffirmed in the Water Power Act.

## 5

These are the principal provisions of the Water Power Act of 1921. Since that date the law has been amended in some particulars. In general these amendments do not change the basic principles of the law nor fundamentally alter the power policy which it enunciates. The reorganization of the state administrative system in 1927 caused certain changes to be made in the title and personnel of the commission which

part thereof means the actual and reasonable original cost to the licensee of the lands of such project or such part, less depreciation if any, plus the cost of reproducing the ways, means, and works thereon, less the depreciation of such ways, means, and works including in such costs a reasonable allowance for organization and development expenses, but excluding therefrom any allowance for the value of the license or the contract lease or franchise, or value as a going concern, or future profits in pending or existing contracts or prospective profits, revenues, dividends, or any other intangible element." (Consolidated Laws of New York State, Chapter X-A, Article 610, Section 10.)

is to be responsible for the administration of the Power Act. The State Departments Law provided that the water control commission, a division of the conservation commission charged with supervision of the problems of water supply and flood control, and the water power commission, which was created in 1921 by the original Water Power Act, should both be abolished.<sup>1</sup> The powers and duties of both were thereby transferred to a new water power control commission to consist of the conservation commissioner, who should be the chairman of the commission, the superintendent of public works, and the attorney general. This new commission thereby became the head of the division of water power and control of the conservation department.

This law also provided that "a license issued under the provisions of such article by the water power and control commission shall not be effective until approved in writing by the governor" and "a modification of such license shall not be effective until approved by the governor in like manner." Both of these changes became effective on January 1, 1927, and are now part and parcel of the water power law of the state. There have been other minor amendments from time to time which need not be considered here. The requirement that the governor's approval must be secured is, however, of prime importance. Due to the fact that the governor now appoints the conservation commissioner and the superintendent of public works, the change in the personnel of the commission is also likely to have a pronounced effect upon policy. Both changes very materially increase the power of the governor over the development and control of the water power resources of the state.

<sup>1</sup> New York State Session Laws, 1926, Chapter 619.

## 6

The basic principle of the Water Power Act of 1921 is private development of the power resources on authorization of a commission of the state government granted through the medium of a license which shall have a maximum term of fifty years. The specific provisions of the license which are mandatory and of most importance are: fifty-year maximum term, an annual rental charge, time limits on the

preliminary surveys and upon the actual construction, use of the right of eminent domain and final re-entry of the state at the expiration of the license under certain conditions. It is this power policy which the water power commission attempted to put into effect during the period 1921-1926. This attempt finally culminated in the controversy between the commissioners then in office and Governor Smith. The development of this dispute will be the subject of the next chapter.

## CHAPTER II

## ADMINISTRATION OF THE WATER POWER ACT, 1921-1926

## 1

SINCE the Republican party in 1921 was in complete control of the departments of the state government, including the water power commission, it was generally expected that immediate and rapid progress would be made in the development of water power in accordance with the principles of the water power policy which had been enacted into law by the legislative leaders of that party. But it is apparent that the situation is as hopelessly deadlocked at the present time as it ever has been since 1907. This chapter will be devoted to a narration of the events which took place during the period 1921-1926 which show the reasons for this lack of progress. If we seem to emphasize the St. Lawrence situation to the exclusion of the problems connected with the Niagara and the inland rivers, it will be due to the fact that the chief point of contention during this period was with reference to the development of the former. It must be remembered, however, that the problems on the St. Lawrence and the Niagara are very similar, and the main points of the

controversy between the governor and the water power commission are equally applicable to the Niagara.

## 2

During the period 1921-1926 the water power commission received thirty-four applications for licenses to develop water power at various points in the state. Of these applications twenty-three were for the use of surplus canal waters; two were for rights on inland rivers; five involved the waters of the Niagara; and four the St. Lawrence.

Between 1921 and 1924 none of the applications involving the surplus canal waters were acted upon by the commission. During the years 1921-1922 the superintendent of public works did not certify to the commission that surplus waters not necessary for navigation purposes were available. Such certification was necessary before the commission could act with reference to these waters. Then in 1922 the legislature passed a law authorizing the superintendent of public works to extend the state development of the water powers of the canal waters so that the

various canal structures might be supplied with electric current.<sup>1</sup> The law provided that any surplus current not needed for this purpose might be sold on the market. It also carried an appropriation for the construction of two state power houses at Crescent Dam and Vischer's Ferry. As a result of this law, opportunity for private exploitation of the waters of the canal was limited and the commission approved only the state projects upon which the construction was immediately begun.

In 1923-1924 the commission came under the control of the Democratic party which was on record under the leadership of Governor Smith as being opposed to the policy of private development. As a result of this attitude on the part of the commission of 1923-1924 all applicants for surplus water power rights on the canal were notified by the commission on September 25, 1924, that it would dismiss their applications in view of the policy of state development of such water powers which had been enunciated by the law of 1922, referred to above, and which was being put to practical application at Crescent Dam and Vischer's Ferry. For these several reasons, therefore, no licenses for private development of surplus canal waters were issued during the period 1921-1924.

In 1925, however, the results of the 1924 election made themselves manifest in the personnel of the commission which again came under the control of the Republican party. The "leaning" of the new commissioners was now to be toward the policy of private development. Immediately several applications for use of surplus canal waters were received and considered by the commission. In 1925-1926 four licenses were issued for projects of this

nature and rental charges were fixed in each case. Thus between 1921 and 1926 only six licenses of this type were issued, two of which were for state projects.

### 3

One of the two applications involving the inland waters pertained to a project upon Moose River which would necessitate the flooding of state lands in the forest preserve. Since the constitution of the state as amended by the so-called Burd Amendment of 1913 allowed only 3 per cent of the forest preserve to be flooded and then only in the interests of "public health and safety," this project was illegal.<sup>2</sup> It was illegal because water power development does not come within the scope of the "public health and safety" clause. In an attempt to remedy this situation the legislatures of 1922 and 1923 passed the necessary amendment to the constitution, but it was denied ratification by the people in the referendum of 1923. In view of these considerations the commission dismissed the application for the Moose River project in September, 1924. The second inland river application involved the waters of the Hudson River. No action has yet been taken upon this application.

### 4

Of the five applications pertaining to the Niagara River four were submitted during the first year. Three of these were for projects in the Niagara Gorge and one involved a diversion above the Falls greater than the treaty between the United States and Great Britain would allow. Action upon the latter was deferred until the treaty provisions should be altered. Hearings were held at various times during the years 1921, 1922, and 1923 for the consideration of

<sup>1</sup> New York State Session Laws, 1922, Chapter 532.

<sup>2</sup> Constitution of New York State, Article 7, Section 7.

the other applications. Applications Nos. 8 and 16 concerned the same project; namely, the utilization of the water returned to the foot of the Falls after it had once been used by the Niagara Falls Power Company. A preliminary permit was issued by the Federal Power Commission in 1922 to the Lower Niagara River Power and Water Supply Company, but the state water power commission took no definite action upon the applications until 1924. Application No. 17, which involved the waters of the lower part of the river but which was designed to utilize them in a different way, was not acted upon by the commission previous to 1924 due to the lack of sufficient data as to the feasibility of the plan.

As was mentioned above with reference to the applications for utilizing surplus water from the canal, the water power commission in 1923-1924 was under the control of the Democratic party. Acting upon their avowed support of the principle of public development, the commissioners in September, 1924, denied all the applications involving the waters of the Niagara River. But when the Republicans once more were in control in 1925, the activity with reference to these applications was renewed. In September of that year the Lower Niagara River Power and Water Supply Company, which had previously applied for the waters of the gorge through application No. 8, introduced another petition to the commission (No. 27) for the same project. In November of that same year the commission issued a preliminary permit to that company for three years which was to enable it to file complete data with the commission. The issuance of this preliminary permit is the only definite action taken looking toward the development of the waters of the Niagara River during the period 1921-

1926 with the exception of the wholesale denial of applications by the Democratic commission in 1924.<sup>1</sup>

From 1921 to 1925 all the commissions had labored with the problem of fixing an annual rental charge which the Niagara Falls Power Company should pay for the amount of the water which it was diverting in excess of 15,000 cubic feet per second. When the Niagara Falls Power Company, the Hydraulic Power Company of Niagara Falls, and the Cliff Electrical Distributing Company were consolidated in 1918 by legislative enactment, the diversion of 15,000 cubic feet per second was authorized. Since this was done by legislative enactment, there could be no rental collected for that diversion because the charter granted at that time made no provision for it. The consolidation act of 1918 expressly stated, however, that any diversion in excess of this amount should be the basis of an annual rental payment to the state. Finally after years of bickering with the company the commission was able to reach an agreement with them and in April, 1925, the whole matter was adjusted satisfactorily. The amount of excess diversion was fixed at 4,400 cubic feet per second. The annual rental charge for the same was fixed at \$60,000 with a lump charge of \$120,000 for a smaller amount of water was used between 1922 and 1925. The first payment was made in 1925 and now the state is receiving a substantial revenue from this source.

##### 5

Three of the four applications involving the waters of the St. Lawrence were presented to the commission during the first year of its existence. They were presented by the Louisville Power

<sup>1</sup> For copy of preliminary permit so issued see N. Y. State Water Power Commission, Sixth Annual Report, 1926, Appendix No. 4, pp. 58-64.

Corporation which sought a license for rights near Croil Island (application No. 12), the St. Lawrence Transmission Company which desired rights in the vicinity of the Long Sault (application No. 14), and the St. Lawrence River Power Company which was seeking a license to use a submerged weir at Massena (application No. 21).

The last-mentioned application was merely an attempt to secure a license to continue the use of this weir which had been built during the war without authorization of the state. The parent corporation of the applicant was the Aluminum Company of America, which was engaged in the manufacture of war materials at the time that the weir was built. The authority for its construction was granted by the United States government and the International Joint Board of Engineers. There was no opposition to the application, but there was some difficulty in reaching an agreement as to the annual rental which should be charged. During the year 1925, after nearly four years of controversy, the rental charge was fixed at \$11,000 per year dated from January 1, 1922. On this basis the license was issued by the commission and accepted by the company.

The other two applications made at the same time were not disposed of quite so simply. Both applicants, the Louisville Power Corporation and the St. Lawrence Transmission Company, were owned by the Frontier Corporation. The Frontier Corporation was in turn owned and controlled by the General Electric Company, the Aluminum Company of America, and the E. I. Dupont de Nemours Company. The St. Lawrence Transmission Company, initiator of application No. 14, later changed its name to the St. Lawrence Valley Power Corporation, and will be so designated throughout this report. The applications initiated

by these two companies were for different projects on the St. Lawrence River. Application No. 12, presented by the Louisville Power Corporation, involved the construction of two power houses in the vicinity of Croil Island together with the necessary dams, locks, etc. The other company initiating application No. 14 involved the construction of two or more power houses at Barnhart Island with the necessary dams and other structures. Hearings on both applications were held during the year 1921, and on December 29 preliminary permits were issued to both. These permits allowed the applicants to maintain the priority of their applications while securing the necessary data and completing their plans. The permits in both cases provided that the applications should be completed and all maps, plans, and data filed with the commission on or before January 1, 1925. They further provided that all the work undertaken under the permit should be subject to inspection by the agents of the commission; that full and accurate vouchers should be kept for the expenses incurred by the companies in their investigations and that the same should be presented to the commission; that no construction of any kind was authorized by the permits, and that they should be considered in force only if the applicants should accept its conditions and the provisions of the Water Power Act and its amendments in accordance with which the permits were issued. On April 20, 1922, the formal acceptances of both applicants of the terms and conditions of the permits were received by the commission. The permits were then issued. No further action was taken in 1922.

In 1923 both applicants submitted additional information to the commission in regard to the projects. No further action was taken by that body,

however, because of some disagreement as to the relative status of the rights of the state of New York and the United States with reference to the waters of boundary streams. Accordingly the major efforts of the commission of that year were directed to the end of securing an understanding with the Federal Power Commission upon the disputed points. On March 29, 1923, another company, the American Super-Power Corporation, submitted two applications to the commission. One involved the waters of the St. Lawrence and the other the waters of the Niagara. The applications were not formally filed pending consideration by the commission.

The year 1924 which witnessed the wholesale denial by the commission of the applications which we have already considered also saw the same fate meted out to the two applications involving the Niagara and the St. Lawrence. They were denied by the commission on the grounds that such action was in accordance with the water power policy expressed by Governor Smith in his message to the legislature, in which he opposed "the issuing of licenses to private companies for the development of water power from the waters in which the state has a right or an interest." As a further basis for this wholesale denial of applications the commission called attention to the fact that there had been introduced in both the 1923 and 1924 sessions of the legislature a bill called the Rabenold Bill, which embodied the power policy of Governor Smith. It called further attention to the fact that this bill had passed the senate upon both occasions but had been defeated in the assembly. For these reasons the commissioners considered themselves justified in cleaning the slate in the manner which they did.

The Republican commissioners who came into office in 1925 wasted no time

in condemning the action of their predecessors. They went to work on the assumption that the denial of the applications on the ground of the opposition of Governor Smith was of no effect. While holding to the above mentioned assumption, the commission, nevertheless, allowed both applicants for the waters of the St. Lawrence to present new applications for these projects so that all possible protection "to their rights might be secured." These two new applications were listed as Nos. 12-a and 14-a respectively, but were considered to be of the status of the old applications initiated in 1921. February 25, 1926, was set as the date for a hearing upon these applications. Thus during 1925 the stage was re-set so that the administration of the Water Power Act might proceed from the point at which it was so completely disrupted by the action of the Democrats.

## 6

By this time it was evident that the commission fully intended to grant a license to one of the applicant companies for the development of water power on the St. Lawrence. Hearings, conferences, and general discussions were held one after the other. The office of the state engineer engaged in a comprehensive study of all the proposed plans so that accurate data might be available to the commission which could serve as a basis for subsequent action.

One of the first concerns of the commission in 1926 was a consideration of the status of the application of the American Super-Power Corporation which, as we have noted, had submitted two applications to the Democratic Commission in 1923. The applications at that time had not been formally received and accepted by that commission, probably on account of the

fact that its members had already determined to deny all pending applications. After an extended hearing upon the question, the new commission decided that "in its consideration of the problem it would deem the application of the American Super-Power Corporation as having been filed on March 29, 1923." It was then filed as application No. 32, but having the "time-status" of its first submission to the previous commission.

On February 25, 1926, the first hearing by the new commission relative to the applications of the Louisville Power Corporation and the St. Lawrence Valley Power Corporation was held. This hearing was well attended by the representatives of various civic organizations throughout the state who were interested in presenting to the commission their attitudes concerning the power policy of the commission in general, rather than their opinions about the specific projects immediately involved at the hearing. Together with the introduction of resolutions on the part of the representatives of such organizations, testimony was taken from representatives of the applicant companies as to the financial responsibility of the Frontier Corporation, the parent company of both applicants, and as to the interest of the General Electric Company, the Aluminum Company of America, and the E. I. Dupont de Nemours Company in the development of the water powers of the state. Testimony of George T. Bishop, the president of the Frontier Corporation, was taken. As to the engineering qualifications of the applicants, Colonel Hugh L. Cooper testified at considerable length. Colonel Cooper was the consulting engineer of the company that would undertake the actual construction in the event that either one of these two applicant companies should have been granted the license. Con-

siderable portions of his testimony were concerned with the narration of his experiences with government projects as compared with those under private management. The stenographic report of this testimony indicates that he portrayed without reservation the relative inefficiency, waste, and delay which he had always experienced with government projects.<sup>1</sup> He predicted with no uncertainty that the St. Lawrence project would entail tremendous extra expense and delay if it should be undertaken by the state of New York or a corporate organization of the same.

At this time both of these applications were drawn up on the basis of a two-stage development. That is, their plans called for the construction of two dams and power houses at two different points on the river. On April 9, 1926, however, the St. Lawrence Valley Power Corporation submitted a new plan which provided for a one-stage development. This plan proposed only one dam, but that of sufficient size so that it would take advantage of the complete flow of the river. A hearing upon the technical features of this new plan was held at that time. On May 6, 1926, the American Super-Power Corporation presented its plans and estimates to the commission. The company also requested more time in which to prepare new plans which seemed more feasible as a result of further study of the features of the St. Lawrence River. This extension of time was granted and on June 3, 1926, a further hearing was held at which this applicant submitted four alternative plans for this project, complete in each case with maps and estimates.

During the summer of 1926 no further hearings were held. The members of the commission devoted this

<sup>1</sup> Report not published.

time to conferences with the officials of Ontario and the hydro-electric commission of that province. The purpose of these conferences was to bring about an agreement with the interested and responsible Canadian government and power officials as to the type of development which should be used on the St. Lawrence. All of the plans under consideration of the New York water power commission were submitted to these Canadian officials. The gist of the results of these conferences was that the Canadian officials expressed substantial agreement with the proposed plans, but that until the state of New York had designated its licensee or had decided upon what basis it desired the development to take place, no complete accord or understanding would be possible. Until some company or state agency had been empowered by the proper authority of the state of New York to undertake the actual development of this resource, the Ontario hydro-electric commission which had already been so empowered by the province would be unable to come to a final decision as to the details of the project. In addition to these activities of the commission, State Engineer and Surveyor Roy G. Finch undertook an extensive survey of the project. On June 29, 1926, he presented his report to the commission which sets forth his findings and in which he recommends certain "terms and conditions" which should be included in the license when issued.<sup>1</sup>

One section of the Conservation Law (a portion of which consists of the Water Power Act) requires that when the commission shall have secured sufficient data upon the project for which a license is sought by two or more applicants, it shall determine the terms

and conditions which shall be included in the license, when and if issued, together with the rental charge which is to be levied upon said project. The commission is also required to set forth its conclusions in this regard in the form of a formal "determination." Then, in case one or more of the applicants indicates willingness to accept and abide by the terms and conditions so determined, including the rental fee, the commission shall set a date for a final hearing at which time a license may be issued in accordance with the provisions of the law which establish the preferences to be allowed in granting the license.<sup>2</sup>

In accordance with this provision of the law the commission on September 24, 1926, adopted a "determination."<sup>3</sup> This determination set forth in legal phraseology the terms and conditions which would appear in, and in fact constitute, the license if granted. This was accepted by two of the three applicant companies—namely, the American Super-Power Corporation and the St. Lawrence Valley Power Corporation. On October 15, 1926, hearings were held to establish the financial responsibilities and reliability of the two companies and to determine the relative amount of experience which they had had with reference to similar projects. The method of financing the project was at this time under consideration. Both companies were given until December 1, 1926, to furnish information on all these points and December 8 was set as the date of the final hearing. This brings our story down to the point of the intervention of Governor Smith which resulted in the withdrawal of both applications.

<sup>2</sup> N. Y. State Conservation Law, Article 616, Sections 2 and 5.

<sup>3</sup> N. Y. State Water Power Commission, Sixth Annual Report, 1926, pp. 35-49.

<sup>1</sup> N. Y. State Water Power Commission, Sixth Annual Report, Appendix No. 1, pp. 27-35.

## 7

Governor Smith had always been consistently opposed to the principles of the Water Power Act of 1921. In many speeches to the public and in every message to the legislature he consistently advocated a power policy much opposed to the one embodied in this law. It was, of course, under his leadership and largely due to his influence that the commission of 1923-1924 denied all the pending applications. Thus the Republican commission in power during the years 1925-1926, working with the avowed intention of issuing a license to allow private development of the water powers of the St. Lawrence, was "flying its flag of private development" directly in opposition to the governor. By November 1, 1926, the members of the commission had come to an agreement concerning the terms and conditions of the license, had set forth a "determination" which had been accepted by two of the applicant companies, and were ready to grant the license as soon as they could determine which should receive the same. With such a situation existing, the interested observers of political events in the state were curious as to what the governor would or could do to prevent the commission from accomplishing its purpose. The situation looked hopeless from the point of view of a supporter of the Smith power policy. But on November 3, 1926, the first of a series of telegrams and letters was received by the members of the commission from the governor in which he vigorously and ably protested against the intended action of that body.<sup>1</sup> It was this series of telegrams

and letters which was the direct cause for the withdrawal of the applications before the commission.

We must mention at this point that on January 1, 1927, the legislative enactments effecting the long-discussed reorganization in the administrative structure of the state government were to go into effect. They had been passed by the legislature at its 1926 session. We need not discuss the general theory of this reorganization movement, but we must mention that in accordance with it the water power commission was to be abolished and would legally go out of existence on January 1, 1927. In its stead there was created, as we have mentioned elsewhere,<sup>2</sup> a water power and control commission which was to head a division of that title in the conservation department. The important feature of the change was not the change in name or alteration of its position in the skeleton outline of administrative agencies; the important consideration and the one which interested both the governor and the members of the expiring water power commission was that the new commission would be composed of the conservation commissioner, the superintendent of public works and the attorney general. What made this change in composition so extremely important was that after January 1 the governor would appoint two of the three members of this new commission. The attorney general would be the only elective official on the commission and the only one not directly under the control of the governor. In this way the governor would have complete control of the commission after the first of the new year. In addition to this we must remember that the Water Power Act had been amended so as to require that the governor should sign all licenses and permits issued by the

<sup>1</sup> For a reproduction of this series together with the replies of the commissioners to the same see N. Y. State Water Power Commission, Sixth Annual Report, 1926, Appendices 6-10, pp. 67-76.

<sup>2</sup> *Ibid.*, p. 31.

new commission before they should be considered legal and in effect. This provision was also to be effective on the first day of January, 1927. It was quite evident to all concerned that, unless a license was issued by the expiring commission before the first of January, no license would be issued at all at least for the next two years. It is not at all difficult to understand, therefore, why the commission was so eager to proceed rapidly with the act of granting the license and why the governor was equally determined to block such action at all hazards. This was the reason for the interesting verbal tilt via telegram and letter which took place in November and December, 1926, between the governor and the members of the commission.

The governor's telegram to the Hon. Alexander MacDonald, chairman of the Water Power Commission, on November 3, 1926, called upon him to use his personal influence to prevent the members of the commission from issuing the license as they contemplated doing. He based his appeal on the grounds of the impending change in personnel, organization, and procedure which we have discussed above. On December 2, almost one month later and but six days before the date set for the final hearing on the applications, the commissioners, Chairman MacDonald excepted, sent a reply in the form of a detailed letter.<sup>1</sup> This reply to the governor's request for delay was in general a categorical denial that he had shown any reason for such action. The letter began with a review of power legislation in the state and the activities of the several water power commissions during the years 1921-1926 which we have already set forth in this chapter. The commissioners pointed out that such activities had been

undertaken under the provisions of the Water Power Act of 1921 which they emphasized was the first and only power policy which had been enacted into law. They suggested to the governor that his objection to their intention of issuing a license was based on a question of policy and not one of administration; that the power policy of the state as outlined in the statute would still be in full force after the first of the year despite the change in the organization of the administrative machinery to put that policy into effect; that the legislature was in substantial harmony with reference to its support of this power policy; and that although the members of the new commission might have different ideas, they would still be under obligation to administer the power policy as sanctioned by the legislature. They reminded him that he had sought in vain to have the legislature alter that policy and that there was little if any possibility that the new legislature of 1927 would alter it in the slightest degree, and certainly not to the extent of changing the fundamental policy of private development under lease. In view of these facts and considerations the commissioners expressed to the governor their sincere belief that they were justified in refusing to alter their plans because of his opposition.

In conclusion of the rather lengthy communication the commissioners listed what they termed "special and peculiar reasons why further delay would be disastrous to the best interests of the people of the state." These "special and peculiar" reasons included the statements that the industries of the state were being hampered by the lack of sufficient low-cost power and that an industrial expansion of a billion dollars was being delayed; that the St. Lawrence could be developed only with the coöperation of Ontario

<sup>1</sup> Letter signed by Commissioners Finch, Ottinger, Knight, and McGinnies.

and that this province had stated through its officials its immediate need of additional power; that if there was to be a delay Ontario would secure this needed power elsewhere and would then not be willing to coöperate at a later date in the development of the St. Lawrence; and that unless the state should act immediately, the development of the St. Lawrence would be undertaken as a navigation project by the federal government in which case the power development would be incidental, saddled with the expense of the whole project, and controlled by the federal authorities. As a parting concession to the governor, the commissioners stated that although there was no possibility that the 1927 legislature would repeal the Water Power Act, and while proceeding to grant the license on December 8, they would insert in it a provision that in the event the 1927 legislature should change its power policy, the license so issued would automatically become null and void.

On the next day, December 3, the governor replied to the letter. He again stressed the relation of the administrative reorganization to the administration of the Water Power Act. He stated that the purpose of the reorganization and especially of the amendment to the Power Act calling for the formal approval of the governor to all licenses was to place "the responsibility for important administrative duties where they belong"; namely, upon the governor. He claimed that these changes proposed by the Hughes Commission and enacted into law in 1926 were in spirit and purpose operative as soon as enacted although not legally in force until the first of January, and that to proceed with the attempt to license a project on the St. Lawrence would be in direct violation of that spirit and purpose. He re-

fused to concede their avowed "special and peculiar reasons" for haste, noting that the federal and Canadian engineers were not in agreement as to how this river should be developed for "Great Lakes to the sea" navigation. He stated that a long period of time would elapse before that development would take place and that there was no danger that the rights of the state of New York over the power resources of that river would be usurped by the federal government. In conclusion he wrote, "I ask you again as governor and as governor-elect to refrain from any further action on this proposed lease in the few days left before you go out of office."

The governor followed two days later with another letter addressed to each member of the commission. This was in the nature of a formal notice to them that he had retained Samuel Untermyer as special counsel, to advise him and "to take such action in the courts as may be deemed necessary for the protection of the interests of the state." He requested that if the commission was still intent upon granting the license they would delay that action until December 18, during which time his special counsel might complete his investigation of the situation and prepare the necessary papers to seek an injunction in the courts to prevent such action. He informed the commissioners that copies of this letter were being sent to the American Super-Power Corporation and the Frontier Corporation, "who are hereby put upon notice and will act at their peril." Finally upon December 8 he addressed a final letter to the commissioners, indicating to them that Mr. Untermyer had informed him that the proposed license was illegal and that "on the face it appears to be an option" which the commission did not have the authority to grant. With such a state of affairs

he renewed his request that action be deferred.

The upshot of this verbal combat was that the two applicants immediately withdrew their acceptances of the "determination." The American Super-Power Corporation based its withdrawal on the grounds that none of the plans had received the approval of the federal authorities and even that the New York commission itself had not determined upon final plans. The Frontier Corporation, through its president, withdrew the acceptance of its St. Lawrence Valley Power Corporation on the grounds that "political difficulties and the governor's threat of litigation" constituted an extra burden which complicated the problem and that "the benefits from the grant are too slight at best to warrant us in assuming these extra burdens."<sup>1</sup> Thus ended the first real engagement between the governor and the commission. Thus the governor was able to

<sup>1</sup> N. Y. State Water Power Commission, Sixth Annual Report, 1926, Appendix No. 6.

prevent the commission from granting the proposed license for the private development of the St. Lawrence and to secure the postponement of such action for the period of his term of office.

## 8

But what plan did Governor Smith have to offer? That is a natural and inevitable question which one should answer after disclosing the persistence with which he combatted the program of the water power commission which sought to put into effect the provisions of the power policy expressed in the Power Act of 1921. The average American professes a dislike for a destructive critic and the governor was too wise in the ways of practical politics and also too completely a student of the problems of the state to be caught napping in this regard. He had a plan which he had proposed and supported continuously since 1924. In the next chapter, therefore, we shall briefly consider the governor's plan for a power authority.

## CHAPTER III

### THE STATE WATER POWER AUTHORITY

#### 1

DURING the entire period of his activity in public life, both as a member of the assembly and as the chief executive, Governor Smith had championed the cause of the state development of the water power resources which it owns or in which it has definite rights. As a member of the assembly and as the Democratic leader of that body he supported through his vote and his influence the plan for the development of water power which had been proposed by the conservation commission of 1911-1914. It will be

recalled that this plan proposed that all dams, power houses, transmission lines, and all other works that were necessary for the development of the water powers of the state should be constructed and operated by the government of the state. The plan in effect provided for a state power industry in which transmission and sale to municipalities as well as the generation of the electricity should be the business of the state. Mr. Smith, who was at that time an assemblyman, wholeheartedly approved this sweeping and progressive plan and brought to bear all of his power in the legislature

in a vain attempt to secure its adoption. Although this plan did not receive legislative sanction, and despite the fact that the personnel of the conservation commission was changed in 1915 so that Republican policies were recommended to the legislature by that agency, still Mr. Smith remained stubbornly opposed to any plan other than state development.

When he became governor for the first time on January 1, 1919, he wasted not a moment in urging the legislature to provide for such type of development. In his first annual message to that body he very emphatically reiterated his belief that if the people of the state were to receive the benefit from these resources, it would be necessary for the state to retain complete ownership and control over them and to pursue the development through the medium of a state agency. This same recommendation of policy and this same insistence that the situation demanded government ownership and operation have characterized every speech that he has made on the subject.

In a special message to the legislature in 1923, we find him asking that body to authorize the state engineer to begin developmental operations on the St. Lawrence and Niagara Rivers.<sup>1</sup> In the same message he asked the legislative body to repeal the provisions of the laws of 1921 and 1922 which provide for private development under lease and to substitute for them a policy of state development. This request was ignored by the legislature as was to be expected.

In his annual message of January, 1924, we find him proposing for the first time the creation of a power authority as an agency of the state which should be charged with the task

of the development of these resources.<sup>2</sup> Previous to this time his program had called for this development by some ordinary agency of the government. From 1924 to the time of his retirement from office every annual message to the legislature had insisted that the power authority should be created and the policy of private development should be repealed. The same program had been the subject of several special messages to that body. All such requests of the governor were accorded little consideration and far less support in the legislative body.

Nevertheless, he never wavered from his position on the problem during all the years in which he held public office. As assemblyman and as governor he stood for this policy of state development. Since 1924 his policy specifically included the creation of a power authority modelled after the Port of New York Authority. At times one hears the insinuation that the governor insisted upon his policy in opposition to the Republicans merely for the sake of partisanship. Anyone who has studied his record on the question, however, must realize that such a charge or such an implication is groundless. The governor may have been wrong. The Republican leaders contended that he was wrong. On the evidence of his consistency in the matter, however, one must come to the conclusion that if he was in error, he was sincerely and honestly so.

2

The reason for the governor's stand as expressed by himself is that "the water powers of this state are the property of all the people, and that when developed the people should be the beneficiaries." He added that

<sup>1</sup> Governor Alfred E. Smith, *Message to the Legislature*, 1924, Legislative Document No. 3, 1924, pp. 13-15.

<sup>2</sup> Governor Alfred E. Smith, *Message to the Legislature Relative to Water Power Development*, Legislative Document No. 76, 1923, pp. 3-4.

"if the people themselves are to get the full benefit of the development of their water power resources it will have to be done in conformity with the ideas (of the people who believe) in ownership, development, and operation by the state." He based this statement on the observation that "in every spot in this state where, by our past policy, we have permitted private development, nobody has been benefited but the individuals who were lucky enough to secure the rights." There are other arguments which the supporters of the idea of the power authority have advanced to support their views. They cannot be considered here. Suffice it to say that the governor's policy grew out of the belief on his part that the above conditions and observations were sound. Consequently he opposed the extension of private development and proposed the idea of the power authority which we shall now consider.

## 3

The essential details of the plan for a power authority are exceedingly simple and can be outlined briefly. A complete understanding of them can be secured by examining the provisions of the Bloch bill which was the power authority bill introduced in the 1927 legislature by the Democratic leader of the assembly.<sup>1</sup>

The central provision of the plan was that the legislature should create "as the corporate instrumentality of the state, a body corporate and politic, perpetual in duration, capable of owning property, borrowing money and making contracts, to be known as the New York State Power Authority." The idea was that to this "body corporate and politic" should be given by legislative grant the title of all the natural resources in flowing water to

which the state had claim or in which it had definite rights at the time. This agency as an instrumentality of the state was to develop such resources in the interests of the people of the state. The power authority was to be composed of three commissioners appointed by the governor "by and with the advice and consent of the senate." These commissioners were to be selected originally for "staggered" terms. That is to say that they should be appointed for terms of seven years, five years, and three years, respectively. When the term of each commissioner expired, however, the successors were to be named for five years which was to be the legal term of office for this position. These commissioners were to be paid no salary, but were to be furnished with adequate expense activities. The chairman and vice-chairman were to be selected by the three commissioners from their own number. They were also to have the privilege of selecting a secretary and other permanent administrative subordinates who should be necessary to secure a sound organization. The commissioners were to be specifically authorized to secure the services of engineering and financial experts whenever they should be needed.

The power authority was to have the rights and privileges of a body corporate and politic. That is to say, in the first place, it was to be a corporation with all the rights, powers, and duties of such. In the second place it was to be a definite instrumentality of the state created to perform a public function. As such it would be given some of the powers and privileges adhering to state agencies. Specifically it was to be given the power "to build, operate, and maintain dams, power houses, and transmission lines and to acquire land for such purpose by purchase or condemnation." To

<sup>1</sup> Assembly bill No. 381.

enable it to perform its specific function completely the authority was also to be given the power to "sell water and/or electric power . . . and to contract for the sale of power" which would be generated by the structures which it was to be authorized to build and operate on the rivers and other waters to which it was to be given title by the legislature.

The general grants of power which were to supplement the ones alluded to above, included the usual corporate rights "to own, hold, and/or lease real or personal property, to borrow money and to secure the same by bonds or liens secured by the revenue from any property held or to be held by it." To this group of rights was to be added that of a body politic to condemn land needed by the authority for the efficient development of the water powers of the state. Also of this nature was the provision that as a body politic the power authority should not be taxed for the bonds or securities which it might issue nor the property which it might own. These were the general powers which it was intended that the agency should have if created by the legislature in accordance with the recommendations of the governor.

There were two limiting provisions which were included, however, for the purpose of better insuring the public interest. In the first place it was to be specifically provided "that all property so held by the power authority including the natural resources of the state, should remain forever inalienable as the property of the state." Secondly, it was to be reserved "that said power authority shall not at any time pledge the credit of the state, nor shall any of its obligations be deemed obligations of the state unless the same be so made by express act of the legislature."

Here in skeleton outline we have the

power authority which was proposed by Governor Smith and sanctioned by his party. Rather than to allow private corporations to develop the water power resources of the state, he proposed that a state agency should be created in the form of a "body corporate and politic" with the rights and powers which we have outlined above. He proposed that to such an agency should be transferred the title to all the water powers belonging to the state and upon it he would have placed the responsibility for the development of the same in the interests of the public. He proposed that this agency should finance the projects without the aid of the credit of the state. He expressed confidence in the idea that this body would be able to market its bonds and securities secured by the property which it would hold and also by the profits which would accrue to it upon the completion of the developments and the generation and sale of the electricity. In this manner the large sum of money necessary to consummate the project would be raised. He prophesied that the power authority would have no trouble finding purchasers for its security offerings and what is more, at a low rate of interest.

Governor Smith did not propose that this agency should sell the electricity direct to the municipal distributing companies as was urged by the old conservation commissioners, but rather that it should merely construct the projects, install the necessary machinery, and generate the electric energy which it should sell at wholesale to private transmission companies. These companies would carry the electricity throughout the state, marketing it to the local distributing companies which were already doing business. According to this plan the wholesale marketing of the electrical energy

would be handled by means of long-term contracts. These contracts would not only fix the wholesale price of the electricity, but would also rigidly provide for the price at which it should be sold to the ultimate consumer. In other words, the amount of profit which the private transmission and distributing companies would be allowed to make would be provided for in the contract.

The theory of the above type of arrangement is known as regulation through the "contract power" of the state as distinguished from the usual type of regulation under the "police power." The latter is the type of regulation that is afforded under public service regulations. The governor contended that regulation under the "contract power" was one of the most important features of his whole plan. He called attention to the fact that the theory of valuation of public utility companies for purposes of rate-making had become enormously involved and complicated within recent years. Under the police power and through public

service regulation the companies engaged in public utility business had been allowed to earn a fair profit not only upon the amount of their real investment but also upon certain intangible considerations such as going value and reconstruction cost. This tended to raise the price of public utility services to the ultimate consumer. One of the features of the plan for the power authority was, therefore, an attempt to substitute another type of regulation which will effectively exclude the consideration of good will, reconstruction costs, and going value as factors in the determination of the value of the investment upon which the public utility should be entitled to a fair return.

Therefore Governor Smith provided a plan for state ownership, development, and operation of the water power resources and structures necessary to generate electricity on the one hand, with private transmission, distribution and sale of this electricity, subject to state regulation through the contract power on the other hand.

## CHAPTER IV

### THE PRESENT SITUATION

#### 1

SINCE the governor was successful in his attempt to block the progress of the Republican power policy, there were subsequently several skirmishes but no major engagements between himself and the Republican legislators on the matter of water power development. During the 1927 and 1928 sessions of the legislature verbal "brick-bats" were hurled from both sides, but neither seemed to have been able to penetrate the breastworks of the other.

On January 10, 1927, a bill was introduced for the purpose of providing for the creation of "a temporary commission to study and investigate the water power situation in the state with particular reference to ascertaining the proper manner for the development and utilization of the water power resources of the State."<sup>1</sup> This bill never came out of committee. It was introduced for the purpose of providing a definite proposal which should serve as a basis for discussion and criticism

<sup>1</sup> Assembly bill No. 79, 1927.

in the legislature, the majority party of which was engaged in the task of attempting to frame some legislation which might break the deadlock.

On January 24, 1927, Assemblyman Bloch introduced a bill which sought to create a New York state power authority in accordance with the policy of Governor Smith.<sup>1</sup> This bill was designed to accomplish several things. In the first place it created the power authority and outlined the powers and duties of that agency. It directed that body to investigate thoroughly the whole water power situation and to confer and advise with expert engineers and bankers upon the problem. After such investigation the authority was to present to the 1928 legislature a comprehensive plan for the development and utilization of the water power resources of the state—a plan complete in all details regarding the construction and operation of the power houses, dams and other structures, together with complete data upon the method of financing the projects and controlling the sale of the resultant power to the transmission companies and to the consumer. The bill also vested the title to all state water power resources in the power authority and expressly repealed the provisions of the laws of 1921 and 1922 which embodied the water power policy of the Republican party. Naturally this bill was not allowed to see the light of day in a legislature controlled by the Republican party.

On March 11, 1927, Senator Hewitt in the senate and Assemblyman Sargent in the lower house introduced identical bills which sought the creation of an investigating commission.<sup>2</sup> These bills represent the product of the discussion and criticism on the part of the Republican members of the legislature

of the previous bill introduced by Mr. Sargent.<sup>3</sup> The commission which was to be established by this bill was to be charged with the duty of investigating all the proposed plans or any other plan that might be proposed in the future and to report to the 1928 legislature its conclusions as to the plan most adapted "to conserve the public interest, accomplish the efficient and complete development of such resources and preserve to the people of the state inalienable its water power resources." This bill represented quite an improvement over the other one introduced by Mr. Sargent. Particularly was this true of the method of selecting the personnel of the commission. The new bill proposed that this commission should be composed of five members of whom two should be selected by the governor, two by the legislative leaders, and the fifth to be chosen by the four already selected. This bill passed both houses of the legislature but was vetoed by the governor on the grounds that the creation of a mere investigating commission was a waste of time.

On March 14, 1927, another bill was introduced by Assemblyman Bloch designed to create the water power authority to endow it with powers of investigation and to charge it with the duty of bringing to the legislature a complete plan of development.<sup>4</sup> This new bill would therefore seem to be almost a duplicate of the one previously presented by the Democratic leader. It differed from the previous one, however, in that it did not seek to vest the title to the water power resources in the power authority and did not seek to repeal the provisions of the Water Power Act of 1921. In other words two of the most odious provisions (from a Republican standpoint) of the

<sup>1</sup> Assembly bill No. 381, 1927.

<sup>2</sup> Assembly bill No. 2100, 1927.

<sup>3</sup> Assembly bill No. 79, 1927.

<sup>4</sup> Assembly bill No. 2121, 1927.

previous bill were removed. The new bill still created the power authority, however, and as in the previous case charged it with the responsibility of proving to the legislature that the governor's plan could be efficiently employed in the development of the power resources of the state. As was to be expected, the legislature failed to pass this bill.

On the same day that the above bill was introduced its author presented another which sought legislative authorization for a referendum on the whole question.<sup>1</sup> The legislature refused to pass the bill. This action was defended in a statement which read to the effect that the problem was too complicated and involved to lend itself to popular decision.

## 2

The introduction of these bills and the action taken upon them which we have just described constituted the only overt action taken by either side during the 1927 session of the legislature. In the 1928 session, somewhat the same form of activity occurred. A Democratic proposal was submitted patterned after the bills which were introduced by Mr. Bloch in the 1927 session and designed for the same end. The 1928 bill was, however, quite an improvement in many respects over the previous ones. In it the Democrats met one objection of the Republicans, by providing that the power authority should investigate the feasibility of all plans that had been proposed as well as that of the governor. But, needless to say, this new bill was not passed by the legislature.

Likewise, Mr. Sargent early in the session submitted a bill which in general provided for the same type of investigating commission, with the same powers and duties as that which had

been proposed in the bill introduced and passed in the 1927 session and vetoed by the governor.<sup>2</sup> This bill was passed by the legislature and vetoed by the governor in the same manner as the one previously passed.

Thus at the close of the 1928 session of the legislature no progress had been made in breaking the deadlock which had developed in 1926. There was plenty of debate and discussion from both factions which accompanied the introduction of and action upon these bills, but it was all futile and unsuccessful. The governor was in complete control of the water power and control commission which accordingly took no action upon petitions for licenses to develop the water powers of the state that were presented by private corporations. The Republicans were in complete control of the legislature, and there was consequently no prospect that the Water Power Act would be repealed and a new policy enacted. It was evident that both parties had "dug in" for a long, hard campaign. The Republicans were presumably hoping to elect the next governor and thus remove the one barrier which prevented official action from being taken to put their policies into actual effect.

## 3

Both sides indulged in the practice of laying their case before the people of the state. Several debates of one kind and another were held during the past year in various communities. The subject matter of these debates and the arguments which the partisans used to gain popular support for their positions are not to be considered in a report of this kind. Suffice it to say that too often it is quite apparent that neither side had data of sufficient accuracy and completeness to convince any critically minded individual. There seems to

<sup>1</sup> Assembly bill No. 2122, 1927.

<sup>2</sup> Assembly bill No. 1668, 1928.

have been a total lack of understanding by state officials and legislators of the real fundamental social and economic implications of this important problem. We heard on the one hand denunciations of "Big Business" and the throttle hold that it has on the power industry and through it on the people as a whole. On the other hand we were lulled by sweeping phrases as to the successes of private enterprise. The charge of "thief" was met by the charge of "socialist," and so it went. It is also true, unfortunately, that with the passing of every day the subject became more frankly the football of practical politics. Proportionately as the discussion became more frankly political it became less pertinent and enlightening.

Logically enough the problem of water power control was one of the most important issues in the last campaign between Albert Ottinger and Franklin D. Roosevelt for the governorship.

Both candidates addressed themselves to this problem on several occasions during their speaking tours about the state. Mr. Roosevelt advanced to the attack in a manner almost identical to that which had been employed by Governor Smith. He accepted Smith's plan for a power authority *in toto*. He promised to urge the same power legislation that had been advocated by Governor Smith. He assailed the Republican position vigorously and unceasingly. It was apparent that Roosevelt's election would mean a continuance of Smith's attitude on the part of the executive which would mean that the water power and control commission would not approve applications for private development. Mr. Ottinger answered this attack in several of his speeches. He defended the Republican policy as set forth in the Water Power Law and as

enunciated in the Sargent bills of 1927 and 1928. His election clearly would have meant that steps would be taken to put that policy into immediate effect and the water powers would be leased for private development.

The election of Governor Roosevelt was a victory for the Smith program so far as the executive office was concerned. At once the new governor proposed to the legislature that five trustees be appointed to report a definite plan to the next legislature with respect to the St. Lawrence, this plan being subject to the following conditions: (a) That the dam, power house, and machinery should be built by the body of trustees and should remain forever in the physical possession of the trustees acting for and on behalf of the people of the State of New York; (b) the sale of this power to distributing companies under what is known as the contract method by which definite fair rates would be guaranteed to the individual consumers.

The legislature did not accept this proposal, and nothing was accomplished at the 1929 session. What will transpire in 1930 remains to be seen. Evidence is not lacking that the Republican leaders are in disagreement as to the wisdom of their party's attitude towards the executive's program and efforts towards a compromise may be made. As we go to press Governor Roosevelt reiterates his adherence on his 1929 platform and his belief that the present method of public service commission regulation will not provide effective control.

4

Thus far our discussion of the present situation has been concerned largely with the boundary streams. It may be said that the emphasis throughout the report has been placed upon the problems involved in the development of

those resources, because these water powers are of paramount importance. The type of development which will be applied to them will determine almost entirely the degree to which the public will benefit from the complete utilization of the natural resources in flowing water. The power developed from these streams will be in the nature of "firm power." That is, it will be available in practically uniform quantities throughout the whole year. This power, however, will have to be supplemented by power produced from other resources in order to take care of the demands at the "peak load." This supplementary power must come from power plants installed on the inland rivers or from steam plants, or both.

It will be recalled from our discussion of the amount of the resource in flowing water in the state that there is over one million potential horsepower to be developed on the inland rivers. It will, of course, be immediately recognized that even though not so valuable as the resources of the boundary streams, yet the potential water powers of the inland rivers are of sufficient magnitude to warrant exploitation and development.

The development of these potential powers depends upon the government of the state to a large degree. This is due to the fact that the potential powers of these rivers cannot be exploited without the construction of a complicated system of storage reservoirs. Since the land which would be flooded in this process is in some instances the property of the state and constitutes a portion of the forest preserve, no private individual or corporation has the authority to undertake the development. That portion of the land to be flooded which is not part of the forest preserve can be secured only through a process of condemnation which can be legally accomplished only in the in-

terest of public use and welfare and not for private profit. This also effectively excludes the possibility of unassisted private development of these resources and places much of the responsibility for the same squarely on the government of the state.

It will be recalled that at the present time there exists a constitutional provision that effectively prevents the flooding of any portion of the forest preserve for the purposes of power development. The first step that must be taken, therefore, is an amendment to that document which will make possible such development. The second consideration which must be definitely decided upon is the determination of the share of the state in the construction, operation of the reservoirs, dams and power houses, and the determination of the portion of the increased value of the power houses which shall accrue to the state. Practically all of the power sites upon these rivers are owned by private power corporations. These power sites in some cases will be doubled in value as a result of the construction of storage reservoirs. It is necessary to determine how much of this increased value shall be turned over to the state as a return for the construction and operation of the reservoirs. This is the key to the whole problem with reference to the development of the inland rivers. It is the subject of controversy at the present time.

5

The present policy of the state with reference to these problems can be found in the Machold Storage Law of 1915. It will be remembered that this law provided for the establishment of "River Regulating Districts" which should construct and operate the reservoirs and dams. The state was to build these structures through the

agency of these "districts" and the cost of the same was to be assessed against all the property, both public and private, which was benefited thereby. This same law also sought to settle the issue which we have labelled as the key problem to the whole development; namely, the determination of the state's share in the increased earnings of the power houses on these rivers. It sought to settle this issue by providing that the state should receive "a reasonable return—upon the value of the rights and property of the state used and the services of the state rendered." The law also defined what should be considered "a reasonable return to the state upon the rights and property of the state used" by stating that this should "be construed to mean six per centum upon the value of the lands flowed." The value of the forest preserve lands which would be flowed is estimated at \$10 per acre. It is evident that "a reasonable return to the state upon the rights and property used" according to the interpretation of such as placed by this law would not provide a very large revenue to the state. For instance, it was estimated that the reservoir upon the Salmon River-Adirondack project would increase the primary horsepower of the privately owned power plants to the extent of about 120,000 horsepower. This would net a material benefit to the owners of such plants to the extent of \$287,000 per year as a maximum and \$158,000 per year as a minimum. In this project 1,290 acres of state land, valued at \$10 per acre would be used. On this basis of a total valuation of \$12,900 the state would receive \$774 annually as its share of the earnings of the whole project. It can easily be seen that the proportion between the return to private interests and to the state is not particularly equitable. This clause of the law which placed

such an interpretation upon "the rights and property of the state used" is popularly known as the "Machold Joker." It has received widespread criticism from all sides until its sponsors have become somewhat uncomfortable.

It reached such devastating proportions that on February 28, 1927, Assemblyman Sargent felt called upon to introduce a bill in the legislature amending the provisions of this law. Mr. Sargent sought to add the following provision to the clause which we have already quoted: "and in addition thereto<sup>1</sup> not less than six per centum upon an equitable proportion of the increased value of the water and riparian rights attaching to each and every power site on the stream or river so regulated, created by or resulting from the regulation of the flow of such stream or river." He also sought to amend the clause in the original Machold Law which we have previously quoted by inserting the words "not less than" before the words "six per centum upon the value of the lands flowed." Great was the consternation in the ranks of the power industry when this bill was proposed. Hearings were held at which Mr. Machold, at that time president of the North-eastern power group, was present with counsel to vigorously oppose Mr. Sargent's proposal. The bill was not passed, but the feeling spread among many legislators that the Machold Law is a little "raw" in this regard and that some provision for a more material return to the state must be inserted in the law. Whether this measure of material return shall be the six per centum of the "equitable proportion of the increase in value" proposed by Mr. Sargent or whether it should be more or less is the key problem to the whole situation.

<sup>1</sup> That is in addition to a six per centum return on the value of the state lands flowed.

In the 1928 session of the legislature Mr. Sargent introduced two more bills which were concerned with the problems of water power development on the inland rivers. The first one provided for a commission to recommend legislation to insure a reasonable rate of return to the state. It was passed by the legislature, but was vetoed by Governor Smith on the grounds that no new commission was necessary. He held that the water power and control commission had the authority and the ability to make such a study and to report to the legislature.

The second bill sought to amend the Conservation Law to safeguard the interests of several prominent cities and villages situated in the Adirondack Mountains. The citizens of these localities had been aroused for some time by the fear that the development of storage reservoirs close to the city limits would imperil the safety of the inhabitants as well as being a material drawback to municipal development. This bill as presented by Mr. Sargent constituted in substance the agreement which had been effected between the civic leaders of these localities and the officers of the power companies interested in storage possibilities. The bill passed the legislature, but Governor

Smith vetoed it on the grounds that making an exception in the case of the few cities which would be affected by this law carried with it the tacit assumption that there would be no limitation upon power developments in other sections of the Adirondack region. It seems quite possible that he felt that should he attach his signature to this bill it would be considered to mean that he would approve power developments elsewhere. At all events he refused to sign the bill and it did not become law.

Hence the 1928 session of the legislature produced no changes whatever in the situation on the inland rivers.

Nothing of any consequence was done in 1929 toward the development of inland rivers or boundary streams because of the continuing disagreement between the executive and legislative branches of the state government. The issue remains and presents itself in practically the same form in 1930. This enforced delay may allow sufficient time for a thorough expert investigation of the fundamentals of both plans. There is obvious need for an authentic, expert, unbiassed report which will deal frankly and honestly with the whole situation with special emphasis upon public welfare.

EDITOR'S NOTE.—As the proof of this supplement was being returned to the printer, word was received of the introduction into the legislature by the Republicans of a bill authorizing the governor to appoint five commissioners to report plans for the development and sale of electric power to be generated on the St. Lawrence River. The governor is reported to have accepted the bill, which, when passed, will enable him to appoint a commission to his liking without legislative confirmation. The Republican anchor to windward is the fact that any plan reported will be subject to approval by next year's legislature, which they hope to control.